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OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON AGRICULTURAL CREDIT

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

JANUARY 24, 1989

Printed for the use of the
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[1] The subcommittee assignments for the 101st Congress had not been made at the time of the hearing and Senator Boren chaired the hearing.

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OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

With Respect to Credit for Agriculture and Rural Communities

TUESDAY, JANUARY 24, 1989

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL CREDIT,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:09 a.m., in room SR-332, Russell Senate Office Building, Hon. David L. Boren (chairman of the subcommittee) presiding.

Present or submitting a statement: Senators Leahy, Boren, Harkin, Daschle, Baucus, Kerrey, and Gorton.

Also present: Senator J. James Exon.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM OKLAHOMA

Senator BOREN. I think we are going to go ahead and start. There are some other members of the committee on their way, but we do have to complete by 12:30 at the latest, so I want to go ahead and commence.

We will be hearing several witnesses today, and I will ask our witnesses, when they testify, if they would come and sit along this side of the table near one of the microphones.

We will have the attorney general of Oklahoma, Attorney General Robert Henry. He will be followed by Mr. Neal Johnson, the Acting Administrator of the Farmers Home Administration, and then by Mr. Leland Beatty, director of the farmer assistance programs of the Texas Department of Agriculture.

And then we will have a panel consisting of Lee Swenson, president of the National Farmers Union; Benny Bunting, Chairman of the Credit Committee of the National Save the Family Farm Coalition; Don Schieber, a farmer from Ponca City, Oklahoma, and Ron Voth, also a wheat farmer from Fairview, Oklahoma. We will be hearing them as a panel a little bit later on.

The purpose of today's hearing is to review the Farmers Home Administration's implementation of the Agricultural Credit Act of 1987, the act which this subcommittee and this full committee labored on for so many days and weeks, and, indeed, months.

Particularly, we are going to be reviewing the implementation of the act as it pertains to the notices of availability of loan servicing programs for delinquent borrowers.

The opportunities to rework loans, to restructure loans, and other opportunities that might be available for us to accomplish two objectives. Save the farms for as many farmers as possible, and then, at the same time, reduce the overall long-range cost to the Federal Government and to the Farm Credit System.

Despite some progress since our last hearing, I remain concerned about the Farmers Home Administration's intention to carry out the letter and the spirit of the law which we passed.

While the Agricultural Credit Act of 1987 merely required borrowers to request consideration for all loan service programs in writing within 45 days after receipt of the notice of availability of such programs, the Farmers Home Administration chose to require borrowers to fill out a number of additional forms during this period of time. Additionally, if a farmer failed to complete the farm/home plan, apparently he, or she, would not be eligible for primary loan servicing regardless of whether he, or she, made a good-faith effort to do so. Instead of carrying out the spirit of the act, the Farmers Home Administration has adopted a "rule of reason" concerning the 45-day limit and this seems to vary, as I can determine it, from county to county and State to State around the country.

Additionally, other aspects with respect to the implementation of the act seem to vary in different counties. In some counties, farmers may not be provided a copy of what has been referred to as the DALR$ computer system printout analyzing their application. In other counties, apparently this information is being provided. It is critical that this be provided to all borrowers, since the exorbitant cost of purchasing this DALR$ computer program and the necessary hardware and software will limit the ability of many nonprofit organizations to provide this information to the borrower as they have often done in the past.

Within the next 2 months we will have a much better picture, a much better idea of whether the Farmers Home Administration really intends to implement both the letter and spirit of the law as its approval or denial of restructuring and other primary loan servicing requests will be completed for the first round of respondents.

At that time, of course, we will be able to look at the number of loans restructured, at the loan servicing provided, and the loan servicing denied.

We will be able to tell how well the system is working and how well the Farmers Home Administration is implementing this particular program.

I intend to examine the results very closely, as I am sure other members of the committee do, and I will be prepared to initiate legislation if it appears that the Farmers Home Administration has not carried out the full intent of the law.

Finally, at this time, I believe it is important to reiterate that the 1987 act is not going to force the Farmers Home Administration to lose additional money. In fact restructuring of farm loans is required only if it is less costly to the Government than foreclosure. Aggressive pursual of the opportunity to restructure loans

will not only help farmers, but I think it will also end up saving a substantial amount of money for the Government as well, and that is why it is so important that those administering the program carry out the spirit and the intent of the law, and not, as has been done in the past, fail to take actions to take opportunities for restructuring of those loans.

Because of time constraints, we are not able to permit everyone interested to testify this morning. We are hearing from a representative group of people, but the record will be held open this week for submission of additional written testimony from interested parties.

Now I want to welcome the witnesses this morning. Also, I want to thank the Chairman of the full committee, Chairman Leahy, who has just joined us. His leadership was so important in the passage of the farm credit legislation last year which, we are very proud of the fact that it passed out of the full committee unanimously, and almost passed unanimously on the Senate floor, only a couple of dissenting votes.

He has had a strong interest in this matter, and has been heard from during the interim period when the notices went out to farmers, and we appreciate him being here today.

Senator Daschle, who actively participated in the writing of this legislation and was involved in every step of that process is also here with us, and I am happy to welcome Senator Kerrey of Nebraska, whom I have known for a long time, and followed his career with great interest as he served very ably as the Governor of the State of Nebraska, particularly active not only as spokesman in his State, but nationally, for farmers and for the agricultural community.

We are very proud of the fact that he joins the Agriculture Committee as a new member of the committee. So I am happy that all the members of the committee could join us, and there will be others that will be joining us this morning.

Chairman Leahy, would you have any opening remarks that you would like to make?

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

The CHAIRMAN. Just a quick word, Mr. Chairman. I am delighted you are having these hearings. When you mentioned to me—I think it was back before Christmas—that you intended to do this, I was very pleased as you know. In fact, I think there came a time that your home address was moved to this committee as you were holding the hearings and markups on the farm credit bill.

You virtually lived here. I think there were times when, notwithstanding some of the grim things you would have to hear in the Intelligence Committee, you were probably happy to be taken away to work on farm credit. I applaud you for what you did.

I also know that Tom Daschle was back home, over and over again, talking with the people who had concerns about this issue. I know how valuable that effort has been. And I, like you, welcome Bob Kerrey, who has seen these problems, both at the executive level as Governor, and now at the legislative level, and Max

Baucus, a distinguished member of the Finance Committee, who also understands this issue.

Finding out what the Farmers Home is going to be doing, as they review thousands of these applications from the borrowers, is extremely important.

We want to know just how well that has worked. I have written, along with you and others, to the Secretary, when these forms first went out, and said that they are so complex, coming right during the Christmas season. Some people who are making an effort to return them within the 45-day deadline may not have everything completed. I want them not to just be arbitrarily cut out by Farmers Home. Farmers Home must work with them and help them with the completion, and where they make mistakes, to give them a chance to work it out. I was pleased with the response to my letter.

However, I am concerned by the numbers that were returned. They were not as high as I think you and I expected for the number of delinquencies out there.

We want to know what is going on in that regard.

I do want to compliment you for holding this oversight subcomittee hearing. As the first hearing of the Agriculture Committee in the One Hundred First Congress I cannot think of a more important one.

[The prepared statement and attachments of Senator Leahy and the prepared statement of Senator Harkin follow:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

I appreciate, Senator Boren, your willingness to hold this oversight subcommittee hearing even before the 101st Congress gets into full swing. I am concerned, as I know you are, about a number of issues regarding the implementation of the Farmers Home Administration (FmHA) provisions of the Agricultural Credit Act of 1987.

I know that a number of Members want to be heard today so I will only raise a few key issues at this hearing.

My most immediate concern relates to the over 80,000 notices that were mailed to delinquent FmHA borrowers. I, along with many Members of the Agriculture Committee, complained to the Secretary because the FmHA notices were delayed and then mailed just after election day, November 8. However, the Act required that copies of the *final notices* be published in the Federal Register on June 6, 1988, 150 days after enactment of the Act.

Those final notices were not published in the Federal Register until September 14, 1988—three months after the statutory deadline. Even worse, the actual mailing of these notices was delayed until after election day.

Under the Act, borrowers then had 45 days from receipt of the notices to request consideration, in writing, for loan program options. That should have been a relatively easy matter. However, FmHA sent several complex financial and other forms, accompanied by complicated and lengthy instructions, to these borrowers. Instead of just being able to request consideration for the loan program options, such as loan consolidation or refinancing of the debt, delinquent borrowers were informed that everything had to be completed and sent in by the 45th day.

The 45-day period fell right at the time of the Thanksgiving, Christmas and New Year holiday season. Thus, FmHA's timing was out of step with the intent of the Act, which required final notices be published by June 6. Also, their timing could not have been worse in terms of borrowers being able to comply. Credit counselors, FmHA agents, and lending institutions were flooded with requests for assistance just when their families wanted them home for the holidays.

In response to a letter signed by myself and several Members of this Committee the Secretary agreed, on December 22, 1988, to provide some helpful relief. The Department agreed to apply the "rule of reason" and allow borrowers who made "good faith" efforts to respond to have additional time to complete certain forms.

While that is a positive step I am still very concerned about how this issue was implemented by FmHA. Borrowers were told with their notices that they had to fill everything out by the 45th day. While some FmHA agents were informed by USDA of this new rule of reason, the borrowers were not sent notices of this policy. Also, USDA established a critical policy affecting borrower rights under the Act but did not so inform these borrowers.

The Department's new policy provided that four specific forms had to be completed and mailed by the 45th day. However, the Act only states that a "request" has to be mailed. Nonetheless, I believe the Department's policy would have been reasonable *if the borrowers had been told about it in advance.* However, they were not so informed. This raises serious issues requiring the Agriculture Committee to continue to carefully monitor this matter.

I am concerned that a lot of borrowers may have missed the deadline because they could not complete all the forms in circumstances where they didn't know that they only had to *initially* complete four of the forms.

Another problem has come to my attention. Thousands of the mailings I am told were returned by the post office as undeliverable. In some cases, a new address may have been known by the local post office but the forwarding order had expired. Also, I have been informed that mailing labels addressed to one of the spouses were returned with a "deceased" stamp even where the other spouse-borrower was still living. Thus, for example, a surviving widow could be denied rights under the Act because the mailing address did not include the name of the delinquent borrower that was still living. I will insist on a full report on these issues to determine how FmHA is handling these matters.

I would like to raise one additional issue. The General Accounting Office recently released a financial audit of FmHA loan programs (GAO/AFMD-89-20). Some of the press characterized the audit as demonstrating that a hugh financial bailout would be immediately necessary because FmHA had a $36 billion deficit. This characterization is inaccurate and has been rejected by GAO.

While FmHA loan "losses," which include the cost of interest rate subsidies to further congressional goals, are large, the budget impact of these losses has in many respects already been recognized. A detailed explanation of this matter would take a lot of time. I don't want to take away time from other Senators and would thus like to submit for the record a detailed summary explaining this matter. This summary was prepared by the Congressional Research Service and is dated January 18, 1989.

Submitted material follows:

89-34 ENR

CRS Report for Congress

FmHA Losses and the Federal Budget

Ralph Chite
Analyst in Agricultural Policy
Food and Agriculture Section
Environment and Natural Resources Policy Division

January 18, 1989

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SUMMARY

A recent General Accounting Office audit states that the Farmers Home Administration (FmHA) has as much as $36 billion in accumulated deficits that will require future large sums of congressional funding. This led some observers to conclude that FmHA will likely fuel the Federal budget deficit, by requiring an infusion of cash similar to the plight of the savings and loan crisis. Although FmHA loan losses are large, the budget impact of these losses have already been recognized in scaled down projections for future loan repayments. The writeoff of these delinquent loans per se does not require a budget outlay; hence, the deficit is not affected.

The majority of FmHA losses stem from two sources. First, as part of its mission of a subsidized lender of last resort, FmHA lends money to farmers and rural residents and enterprises at a lower rate than its cost of funds, resulting in an interest subsidy. Second, when borrowers do not repay their loans, FmHA incurs loan losses.

FmHA funds its accumulated losses by borrowing directly from the Treasury. Each year, the agency submits a request to Congress for reimbursement of losses incurred two years earlier (e.g. the FY90 budget requests reimbursement for FY88 losses). To date, FmHA has been reimbursed by annual congressional appropriations for virtually all of the $39 billion in loan writeoffs that it has recognized through FY89. FmHA estimates that nearly $20 billion in loan loss reimbursement requests will be submitted over the next several years.

Although it may be inaccurate to compare the financial difficulties of the Farmers Home Administration loan programs with that of the savings and loan industry, the magnitude of FmHA's loan repayment problems should not be diminished. It is important to note that the Federal deficit is not increased when FmHA writes off a bad loan. However, because FmHA outlays are equal to the difference between loan disbursements and repayments, loan losses do indeed affect budget outlays because of the loss of the future income stream.

Most budget projections already take into account that the most seriously delinquent FmHA loans will not be repaid. Therefore, unless there were another downturn in the farm economy or other economic shock that caused a further deterioration in the repayment capacity of FmHA borrowers, future outlays, and the Federal deficit should not be further affected by loan repayment problems.

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FmHA Losses and the Federal Budget

Introduction

A recent General Accounting Office (GAO) financial audit of Farmers Home Administration (FmHA) loan programs indicates that from the inception of FmHA loan programs until the end of FY87, FmHA had accumulated losses of $59 billion, of which $23 billion has been reimbursed through congressional appropriations. This leaves an accumulated deficit of $36 billion, which GAO says "will require direct assistance from the Congress at levels significantly greater than Congress has provided in the past." [1]

This statement led some press accounts to liken the FmHA deficit to the savings and loan crisis, stating that an infusion of cash will be necessary in the near future to shore up FmHA. [2] It is true that these losses will eventually have to be recognized by the agency, and hence the Treasury, over the next several years, but there is no compelling reason why this "deficit" needs to be financed all at once and immediately. Moreover, under current Federal budget accounting practices, writing off of these losses creates no new budget outlays.

This report provides background on how FmHA loan programs are financed, which is essential for understanding the implications of the GAO audit.

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[1] GAO Report to the Secretary of Agriculture. Financial Audit. Farmers Home Administration's Losses Have Increased Significantly. GAO/AFMD-89-20 December 1988. p. 10

[2] Wall Street Journal. "Audit of FmHA Shows Fiscal '87 Loss of $22 Billion and a Growing Deficit". December 21, 1988. p. A3.
New York Times. "Farm Lender's $36 Billion Losses May Require U.S. Aid, Audit Says". December 21, 1988. p. A1.

Basic Budget Terms Defined

A number of budget terms are used frequently in this report:

- **Outlays** are cash disbursements from the Treasury. An outlay has the effect of increasing the Federal budget deficit. In the case of FmHA, when a new loan is made, it is recorded as an outlay. As repayments are made, they are recorded as offsets to outlays, or a negative outlay.

- **Budget Authority** is the authority generally provided through annual appropriations, for an agency to commit funds of the Treasury. FmHA annually requests budget authority to cover: 1) the interest rate subsidy it gives its borrowers and 2) the loan losses it incurs when borrowers default on their loans.

- **Program Level** represents the financial value of benefits provided to the public by the Government agency. The annual budget establishes program levels for FmHA loan programs, which act as a ceiling for the amount of new loans that can be made within each loan fund during the fiscal year.

The Mechanics of FmHA Revolving Loan Funds

The Farmers Home Administration operates its $60 billion direct loan portfolio through three revolving funds: the agricultural credit insurance fund, (ACIF), the rural housing insurance fund (RHIF), and the rural development insurance fund (RDIF). The ACIF is the largest of the three funds and includes the loan programs which provide credit to farmers for farm real estate purchases, farm operating expenses and disaster assistance. [3] Loan programs in the RHIF and RDIF provide credit to residents in rural areas for the purchase of primary residences, water and waste disposal and other purposes.

The three funds are considered revolving funds because as borrowers repay their loans, the proceeds are used to make new loans to eligible borrowers. A program level is established for each FmHA loan program in the annual budget process, dictating the maximum volume of new lending that can be made.

Throughout the history of the FmHA revolving funds, loan disbursements and interest expenses have consistently exceeded repayments of principal and interest from borrowers, meaning that the funds operate at a deficit. The

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[3] FmHA also guarantees loans made by private lenders. For a description of these programs see the USDA report "A Brief History of Farmers Home Administration". February 1988. pp. 15-19.

three basic ways that FmHA has funded its operations and its deficit are: 1) selling loans to the Federal Financing Bank, 2) directly borrowing from the Treasury and, 3) requesting a reimbursement from the Treasury.

Federal Financing Bank Activity

Prior to the passage of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), FmHA packaged loans and sold certificates of beneficial ownership in the loan pool to the Federal Financing Bank (FFB), an off-budget arm of the Treasury. In addition to loan repayments, the proceeds from the sale of the loans were also used to fund new loans. Because the loan sale appeared on the books as an offset to new lending, it in effect made the lending operations of FmHA off-budget, as lending became an outlay of the off-budget FFB rather than the on-budget FmHA. The 1985 act requires all transactions by the FFB on behalf of a Federal agency to be considered a means of financing for the agency. As a result, FFB transactions now appear as agency debt to the FFB rather than a sale of a loan asset. As of September 30, 1988, FmHA had $53 billion in debt outstanding to the FFB.

Treasury Borrowing

Because it is no longer advantageous for FmHA to sell loan assets to the Federal Financing Bank, FmHA now borrows directly from the Treasury to finance its lending operations. The amount outstanding totalled nearly $24 billion in September 1988. Direct borrowing from the Treasury will increase significantly over the next several years as FFB loans mature and are rolled over into direct loans from the Treasury.

Treasury Reimbursement for Losses

In conjunction with its annual budget, FmHA submits to Congress each year a request for reimbursement of its losses sustained two years earlier. In other words, when FmHA submits its request for FY90 this year, it will be seeking reimbursement for FY88 losses. Between FY80 and FY87, the three FmHA revolving funds accumulated $35.2 billion in losses, nearly all of which were covered by congressional appropriations in FY82 through FY89.

Sources of FmHA Losses

Why are FmHA losses so large and why can't FmHA be run more like a commercial financial institution?

To a certain extent FmHA losses are part of the nature of the beast. When an institution borrows money at market rates (currently 9 percent) and lends these funds at 5 percent, as FmHA does with more than 50 percent of its loan volume, operating losses become unavoidable. Consequently, even if

FmHA collected all principal and interest on a timely basis, the agency would still lose money because of this interest subsidy.

A second source of losses to the agency is loan losses, which arise when borrowers do not repay their loans. To some extent FmHA loan losses are to be expected since FmHA is a lender of last resort to high risk borrowers that have been denied credit from commercial sources. However, FmHA is quite different than a commercial institution in its recognition of loan losses. Generally, a commercial bank will set up an allowance for loan losses in anticipation of future loan losses. The institution experiences a dollar for dollar reduction in income when a provision is made to this account. When a commercial loan loss is recognized, the allowance for loan losses is reduced accordingly. In contrast to commercial institutions, FmHA does not write off a "bad" loan until the agency acquires the property and disposes of the assets.

The appendix to this report illustrates the magnitude of FmHA losses over the last several years and FmHA projections for future years, and breaks down these losses between the interest subsidy, loan writeoffs and other losses. These two sources of losses represent the vast majority of losses for which FmHA seeks reimbursement from the Treasury. Throughout most of the 1980s, the interest subsidy comprised more than 90 percent of reimbursable losses. The situation changed in FY87 as FmHA recognized $974 million in loan losses, and another $1.8 billion in FY88. FmHA expects to charge off $3.7 billion in each of the next three years, much of it attributable to the servicing of farm loans as required by the Agricultural Credit Act of 1987.

How Do FmHA Losses Affect the Federal Deficit?

A common misconception is that the reimbursement for losses represents an outlay of the Federal government and a commensurate increase in the Federal deficit. Outlays and the deficit, however, are not directly affected by loan writeoffs and reimbursements for losses.

To illustrate: when a new FmHA loan is made, this transaction requires a budget outlay; when a loan repayment is received this reimbursement is recorded as a negative outlay. The net difference between new loans made and loan repayments constitute the net outlays of FmHA. Hence, the making of a new loan adds to the Federal deficit, and loan repayments offset that outlay.

As the farm economy deteriorated in the early to mid-1980s, it became increasingly apparent that a significant portion of the FmHA loan portfolio may never be repaid by its delinquent borrowers. Within the last few years, Federal budget analysts began to recognize the severity of the debt repayment problem and adjusted future loan repayment projections to reflect the potential for not being repaid. Because loan repayments are a direct offset to loan disbursements, the projected loss of this income stream in effect increases net outlays and the budget deficit.

When FmHA is reimbursed for its loan losses through congressional appropriations, it is given the budget authority to write off these losses. This action does not require an outlay and does not add to the Federal deficit. In effect, it is an intragovernmental transfer of funds, whereby Congress appropriates funds to FmHA so that FmHA can retire its debt to the Treasury.

In summary, because outlays are the measure used to determine the Federal deficit, the Federal deficit is affected when an outlay is made, not when a loan is charged off. When a FmHA borrower does not repay a loan, it does indeed add to the deficit by virtue of the loss of the future income stream, but most of this "lost" income has already been recognized in budget projections. Thus, under current accounting systems, the Federal deficit is affected by loan disbursement and repayment rates, not by loan writeoffs or congressional appropriations for reimbursement.

A Closer Look at the GAO Estimate of FmHA Losses

In one sense, the $36 billion estimate of accumulated losses underestimates the true cost of FmHA loan programs to the Government. The GAO estimate does not include the amount that FmHA will have to be reimbursed for the interest subsidy (the difference between interest received on loans to borrowers and the interest paid on FmHA debt). FmHA estimates that its request for this subsidy will be $4.5 billion in FY90, declining to $2.8 billion by FY94.

Since the GAO audit covered years through 1987, the $36 billion estimate overstates the severity of FmHA's loan problems, by not including an additional $16 billion appropriated in FY88 and FY89 to reimburse FmHA for its accumulated losses. The remaining $20 billion in losses stem from the allowance for future writeoffs, not losses that have already been recognized by FmHA. This matches fairly closely to FmHA's projections for future writeoffs shown in the appendix in its projections for reimbursable loan losses for FY88 through FY94.

In summary, the relationship between the GAO estimate of losses and the FmHA projections for future chargeoffs can be derived in the following manner:

	$59 billion	=	Total FmHA losses through FY87
less	$23 billion	=	Appropriations to cover losses through FY87
equals	$36 billion	=	FmHA accumulated deficit as of end of FY87
less	$16 billion	=	Appropriations made in FY88 and FY89 to cover FY86 and FY87 losses
equals	$20 billion	=	Remaining unreimbursed projected loan losses

Conclusion

Although it may be inaccurate to compare the financial performance of the publicly funded Farmers Home Administration to the privately owned savings and loan industry, the magnitude of the repayment problems of FmHA should not be diminished.

On the one hand it is important to note that the Federal deficit is not directly increased when FmHA writes off a bad loan. The Federal deficit is affected when the loan is made, and when and if repayments are received, not when the loan is charged off. However, because FmHA outlays are equal to the difference between loan disbursements and loan repayments, loan losses do in the final analysis increase outlays because of the loss of the repayment income.

Most budget projections have already taken into account that the most seriously delinquent FmHA loans will not be repaid. Therefore, unless there were another downturn in the farm economy or other economic shock that caused a further deterioration in the repayment capacity of FmHA borrowers, future outlays, and the Federal deficit, under current accounting practices should not be further affected by the performance of the FmHA loan portfolio.

Appendix: FmHA Reimbursable Losses, FY78-94
(in millions of $)

ALL FUNDS

	Interest Subsidy	+ Write-Offs	+ Other Losses /2	= Total Losses	Total Reimb. /3
1978	613	15	57	685	685
1979	871	18	55	945	945
1980	1,234	17	71	1,322	1,219
1981	1,909	8	108	2,025	2,128
1982	2,737	31	113	2,881	2,881
1983	3,240	48	206	3,494	3,494
1984	3,891	72	264	4,226	3,467
1985	4,625	166	347	5,138	4,276
1986	5,007	290	530	5,827	7,405
1987	5,239	975	2,481	8,695	8,723
1988	5,460	1,825	1,316	8,601	N/A
1989 /1	5,310	3,702	1,213	10,226	N/A
1990 /1	4,553	3,716	757	9,027	N/A
1991 /1	4,162	3,710	866	8,739	N/A
1992 /1	3,788	1,504	852	6,144	N/A
1993 /1	3,216	1,498	828	5,542	N/A
1994 /1	2,806	1,492	811	5,109	N/A

1/ FY89-FY94 are FmHA estimates.

2/ Other losses are primarily attributed to the sale of acquired property and discounts on the sale of loans.

3/ Total reimbursements are appropriations to cover losses. Requests for reimbursement of FY88-FY94 losses will be submitted in FY90-96 FmHA budgets.

Source: Farmers Home Administration

STATEMENT OF SENATOR TOM HARKIN

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
SUBCOMMITTEE ON AGRICULTURAL CREDIT

HEARING ON THE FARMERS HOME ADMINISTRATION'S
IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987
AS IT RELATES TO BORROWERS

TUESDAY, JANUARY 24, 1989

Mr. Chairman, I want to thank you for convening this oversight hearing today to review the progress of FmHA in implementing the provisions of the Agricultural Credit Act of 1987. This hearing will serve as a continuation of the oversight process that we began last year, including last fall's hearing on the FmHA generally. This hearing focusing on the application of the Act as it relates to FmHA borrowers comes at a very appropriate time. After a delay of many months, FmHA is now putting the borrowers' rights and loan service provisions of the Act into operation.

The basic goal of those provisions is to deal effectively with delinquent FmHA debt while allowing as many FmHA borrowers as possible to continue in farming if that option will allow the government to recover as much or more than foreclosure. This past November FmHA sent notices to over 70,000 delinquent borrowers to advise them of the options they have under the Act to work out their FmHA debts through the loan service programs.

Today I hope that we will get a full report on the progress of implementing these borrowers' rights and loan servicing provisions. I will be interested to see how successful FmHA has been in notifying its delinquent borrowers of the Act's loan service programs and the number of borrowers who have responded to the notifications. I also want to ensure that FmHA personnel are carefully and thoughtfully considering borrowers for loan service programs and are working with borrowers to resolve debts in ways that are advantageous to both borrowers and the government.

Mr. Chairman, I would also note that FmHA finally published regulations governing its guaranteed loan programs in the Federal Register of January 13, 1989. Now that the regulations are out, I hope that the Demonstration Project for purchase of Farm Credit System inventory land can move forward. If the Demonstration Project is to succeed, it will be necessary for FmHA to make a special effort to approve loans under the program in a timely manner. In addition,

Farm Credit institutions must make affirmative efforts to make land available under the Demonstration Project and to allow adequate time for loan applications to be processed by FmHA. Otherwise, Farm Credit System inventory land eligible for the project will be sold before Demonstration Project buyers have a chance to make arrangements for purchasing it.

In that regard, I am troubled by certain language in Attachment 1 to the recent FmHA regulations, which is the form of agreement between FmHA and the individual Farm Credit banks regarding the Demonstration Project. That form agreement provides in paragraph V that the Farm Credit bank "reserves the right to sell its acquired property to any qualified individual until...FmHA has determined the eligibility of the borrower and suitability of the property, and a purchase agreement has been executed between the eligible borrower and the Bank."

With this language, FmHA appears to give a Farm Credit bank authority to sell land to another buyer even though a prospective Demonstration Project buyer is working with FmHA to get the paperwork completed. The Act, however, requires Farm Credit institutions to the extent practicable "to set aside each fiscal year land...for purchase by eligible borrowers" under the Demonstration Project. If Farm Credit Banks may sell property at any time while the Demonstration Project paperwork is pending then the "set aside" language of the Act becomes a dead letter. There must be some flexibility in the system and some affirmative effort to make land available to Demonstration Project buyers or the program will fail.

In addition, Paragraph II of the FmHA's Demonstration Project form agreement provides that a Farm Credit bank "may at its discretion and for the purpose of maximizing the economic return on the sale of acquired property, subdivide tracts of land." This rule is nowhere to be found in the language of the Agricultural Credit Act of 1987. Section 613 of the Act clearly states that Farm Credit institutions "shall if necessary, subdivide tracts of land made available under this subsection into parcels that permit eligible borrowers to purchase the parcels consistent with limits placed on the size of loans made, insured, or guaranteed [by FmHA]." This language was put in the Act for the benefit of the Demonstration Project buyer. Hence, the language of FmHA's form agreement stands the Act on its head by identifying "maximizing the economic return" to the Farm Credit bank as the determinative consideration in subdividing inventory land for sale through the Demonstration Project.

Finally, I believe that two reports recently released by

the General Accounting Office merit brief comment. In the first of these reports, GAO concludes that FmHA farmer loan programs have become a continuous source of subsidized credit. In the second report, GAO states that FmHA has large cumulative loan losses that will require further borrowing from the Treasury or appropriations from Congress. Although the validity of the conclusions reached in the reports are open to question, the reports do raise important issues about the proper role and operating procedures of FmHA that merit careful consideration and analysis.

This is not the proper forum to discuss the details of the GAO reports. However, I do think it is important that these reports be put in proper perspective. As we know, the agricultural economy, including FmHA borrowers, is still working to recover from the most serious income and financial crisis in fifty years. It should also be noted that the Farmers Home Administration has been used as the vehicle for delivering several types of help and benefits that did not fall within the traditional role of FmHA programs. For example, in the 1970s economic emergency and disaster loans were made by FmHA to farms much larger than the typical FmHA borrower and in amounts much larger than the typical FmHA loan. Moreover, FmHA has relieved commercial lending institutions of a good number of risky loans during times of financial stress in the agricultural sector.

I am not necessarily saying that FmHA should not have done these things. We were facing a crisis situation in our agricultural sector and help was needed. Now FmHA is dealing with the financial consequences of the farm crisis, just as other agricultural lenders have had to do over the past several years. That is why the FmHA sections of the Agricultural Credit Act were passed--to help FmHA work out these financial problems arising from the farm crisis. The fact that this working out is now going on is no reason for wholesale condemnation of the FmHA farmer loan programs. Doing so would ignore the important benefits these FmHA programs provide to rural America and our Nation.

Senator BOREN. Thank you very much, Chairman Leahy, and we appreciate your being here, and it certainly symbolizes the interest which you have had on this issue all along.

Senator Baucus, as Chairman Leahy has just said, has also just joined us, and has just come on the Agriculture Committee as a member of this committee.

We have worked together on the Finance Committee for a number of years. He has been a very important member of that committee in terms of interest in the agricultural area, and served on the Subcommittee on Taxation and Debt Management, and is one that has watched the interrelationship between farm policy and tax policy.

I am really pleased that he has decided to take the step of joining us on the Agriculture Committee as well because that will just make him twice as effective for the cause of agriculture with the overlap between the two committees, and Max, we are really glad to have you here today.

Senator BAUCUS. Thank you, Mr. Chairman.

Senator BOREN. Let me ask, Senator Daschle, do you have any opening comments that you would like to make?

STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Mr. Chairman, I will be real brief. I welcome our two new members, two very able new members to this committee, and I compliment you.

You have probably put more time and effort into this bill, and this particular law than anybody else. I, too, have watched with great interest as it has now been enacted.

It has taken a great deal of time for the Farmers Home Administration to come to the point where they are today, and as we hold this hearing, the biggest concern I have is what I consider to be a double standard, a standard by which the Farmers Home Administration can be on one time schedule, and the Farmers Home Administration, on the other hand, demands farmers themselves to be on another time schedule.

Where the Farmers Home Administration can take their time, they seem to be telling farmers you are on our time, you are on our watch, when it comes to adherence to this law.

That is a double standard that I think we need to examine. I do not hold the Farmers Home Administration entirely responsible for this. We put those deadlines in the law and they have chosen, of course, to interpret that law as they see fit, as it applies to them, but they been chosen to interpret the law as we have designed that law, as it applies to the farmers.

I think we have to show some practicality and some forbearance, and certainly some understanding of the complications here as we face the very difficult questions in terms of both interpretation and adherence to this law as we go through the difficult months ahead.

The question now is, will the Farmers Home Administration process all these applications in the next 60 days? I will be very curious, as we hold this hearing today, for the response to that

question, and how we might further examine their relationship with farmers, as we go through the difficult months ahead.

Senator BOREN. Thanks, Senator Daschle.

Senator Kerrey, any opening remarks that you would like to make?

Senator KERREY. None.

Senator BOREN. We are happy to have you. We are very happy to have you, if you move with this dispatch, no telling how much work we can get done in the Agriculture Committee this year. [Laughter.]

Senator Baucus.

STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. Just one very brief point and that is to confirm what Senator Daschle said.

It is clear, that it is not only Farmers Home Administration, but the entire U.S. Department of Agriculture, I think, has to move much more expeditiously in processing either loans or applications or appeals, for example. I am referring in the latter category more to Forest Service appeals, that is not the subject of today's hearing by any stretch of the imagination, but I can tell you, Mr. Chairman, that the USDA's Forest Service sometimes waits 2 years before processing an appeal filed by a timer operator or by a conservation group with respect to a National Forest Service plan. You know, that is unconscionable.

And I juxtapose that against the Farmers Home situation, the one we are dealing with here today. In Montana, for example, a gentleman got his papers in 1 day late, he thought he was on time, was 1 day late, and got a summary rejection by the Farmers Home Administration because he was 1 day late.

It just seems to me that, as Senator Daschle said, that to get some credibility, and to get some belief in the American people in their form of Government, that all agencies, certainly this one, have to be much more expeditious in expediting and processing their paperwork.

Senator BOREN. Thank you very much, Senator Baucus.

I am going to ask our first witness if he would come up now and join us here on this side of the table.

The attorney general of the State of Oklahoma, Robert Henry, and he is accompanied by a special assistant attorney general, Janie Simms Hipp, who is also joining him here.

I would say to the members of the committee, that I am very proud to have the attorney general of our State as the lead-off witness in these hearings today.

He is one of the most respected people in public life in our State, and one of the finest attorneys general in the United States.

He is a young man who I have known since his high school days when I used to coach him in the Hi-Y legislature, so——

The CHAIRMAN. Which legislature?

Senator BOREN. The Youth Legislature of our State, the YMCA program, so you can imagine the pride I have in seeing him now serving as our State's attorney general.

He has been particularly active in the area of agricultural policy. He chairs the Agriculture Committee of the National Association of Attorneys General, and they have had a working group focusing on problems with this law, problems in implementation of this law, and we will value hearing your testimony at this time.

STATEMENT OF ROBERT H. HENRY, ATTORNEY GENERAL, STATE OF OKLAHOMA, ACCOMPANIED BY JANIE SIMMS HIPP, SPECIAL ASSISTANT ATTORNEY GENERAL FOR AGRICULTURE ISSUES, OKLAHOMA CITY, OK

Mr. HENRY. Thank you, Mr. Chairman, and members of the committee. It is indeed an honor to come and talk to you today. I would like to submit my prepared testimony for the record and I would now like to summarize it orally.

It is a real pleasure to speak before all of you gentlemen today and it is especially good, Senator Kerrey, to see you again.

The last time we had lunch together in the grand ballroom at the University of Oklahoma, Nebraska was not so kind to Oklahoma. We went on to lose that ball game, but we will be back next year.

Senator BOREN. Every decade we allow it to happen once.

Mr. HENRY. That is correct.

You might also note, Senator Kerrey, the quotations I have from Attorney General Robert Spire in the record. I would like to take this opportunity to thank you for originally appointing him as attorney general of the State of Nebraska.

He has been remarkably effective and helpful to us in mobilizing the National Association of Attorneys General on this issue.

The National Association of Attorneys General is appropriately referred to as NAAG ("NAG"), and perhaps that is what we are doing here today, but over 3 years ago, our association created the Agriculture and Rural Legal Affairs Committee. That committee has member States such as Minnesota, North Dakota, South Dakota, Illinois, Iowa, Kansas, Nebraska, Colorado, Mississippi, and Oklahoma. Those are the major States that have been participating in the working group on this bill.

Senator Boren was kind enough to attend the NAAG committee's last meeting in Oklahoma City. We were very pleased to have him and we received a lot of appreciation expressed by such organizations as the Farmers Legal Action Group for the work that this committee has done.

I am certainly not an expert on agricultural matters in general, nor am I an expert, Senator Boren, on the Agricultural Credit Act, but I am here today to talk about some things that we have observed, both in Oklahoma, and among the other States.

Senator Boren, you indicated the impact that these foreclosures can have in your opening statement, and that is true, and the cost that eventually will be borne by our Government—as you pointed out—is not increased by the action of this act.

But besides the fact that this act will not appreciably burden our Government, there is another compelling reason to avoid foreclosures. Foreclosures have the effect of flooding our markets with

land and farm implements at lower prices and can, in fact, negatively impact otherwise economically healthy farmers.

So it is even more important that we are careful with the policies that we create.

I would just like to stress to you why attorneys general are interested in these issues. First of all, it is analogous to the sort of consumer-type issues that attorneys general are finding themselves increasingly involved in.

We tend to represent the citizens of our State. We tend to represent the common man, and this is appropriate. For the first time in the history of our Nation, you are seeing the resources of Government marshaled to defend the common man in consumer-type issues.

This allows for much more force, much more impact in protecting them.

The other reason that we are interested is, attorneys general, and all attorneys, are always interested in due process, fairness, the fairness of the system, and I think, as Senator Daschle pointed out, we have some very grave fairness concerns with notice or time limits that apply to one side, but do not in fact seem to apply to the other.

In fact the first major concern that we had with this entire issue was that concern of timing. The notices were mailed out immediately following the election of a new President.

Indeed, it seems to some people that perhaps the notices were politically inspired. But with a calendar, in any event, if you simply take it and look at it, and compare the number of holidays and weekends between Thanksgiving and the first of the year, you find that with the turnaround time that is slowed by holidays, by weekends, by closings, and so forth, the farmers really did not have a full 45 days to respond.

So, that timing was a critical concern for us. In fact, we were lucky in Oklahoma, because we had anticipated this action, and we prepared a number of seminars, along with a number of outstanding farm organizations, to inform and make our farmers aware of their new rights under the act.

In fact, Senator Boren, as you know, you personally came back, endorsed these seminars, and your appearance and support, I think, are the reasons why Oklahoma, at this stage, seems to have one of the highest response rates of all the States.

Initially, calls to the neighboring farm States around us indicate that our response rate, Senator Boren, is about 5 to 10 percent higher than the surrounding rates, and much higher than the national average, from what we are seeing now.

The second concern that we had of course was that there was just an overload of resources and strain on farmers at this time.

The holidays are difficult times in any event, and to be faced with these added responsibilities was just simply more than the farm community could bear.

Attorneys general were not able, in many States, to get seminars together, to put experts together to inform farmers of their rights.

The third concern that we had, of course, was the complexity of the forms. Perhaps Attorney General Spire put it well, when he said: "I have a couple of degrees from Harvard and they are diffi-

cult for me to wade through." He is a very brilliant lawyer, and that 2 inches of forms was kind of difficult.

I guess what we would ask the committee to concern itself with in these hearings is our feelings that there is a need for an extension, especially in light of this timing. If there is some way to obtain some kind of extension, we think that would be useful.

We also think that you should consider the substantive issues that have been raised by farm advocacy organizations. Those are listed in my written testimony. We think you might want to consider urging Farmers Home to send a supplemental information packet that is perhaps less confusing to the farmers, or to lawyers, for that matter, or to Attorneys General, for that matter.

Fourth, we think—and I hate to say this because I do not intend to just be a bureaucracy-basher, but there does seem to be the need for a change of attitude on the part of some local FmHA offices.

And fifth, in Oklahoma, we have found much success with mediation. Some States, like Minnesota, and I believe Iowa, have instituted mandatory mediation processes.

In Oklahoma, as you know, Senator Boren, our mediation program involving Ag-Link and the Oklahoma Conference of Churches, has been extremely successful.

Sixth, the private right of action dispute continues to exist, and perhaps Congress can take some action to resolve that.

Finally, I would like to offer the good offices of the National Association of attorneys general. We will participate in advisory committee or working group sessions with the Department of Agriculture, with FmHA, with the Farm Credit System.

There is no inherent need or reason for State government lawyers and Federal Government lawyers to square it off and sue each other in court all the time.

After all, the same taxpayer is "rich to all that call upon him." I would like to thank you again for allowing us to come, and continue to pledge to you our good offices, and anything that the National Association of attorneys general can do as you carry out this very important task.

[The prepared statement and attachment of Mr. Henry follow:]

ROBERT H. HENRY
ATTORNEY GENERAL
STATE OF OKLAHOMA

TESTIMONY OF ROBERT H. HENRY

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

before the

Honorable David L. Boren, Chairman

Senate Subcommittee on Agricultural Credit

United States Senate Committee on Agriculture,
Nutrition and Forestry

January 24, 1989

ROOM 112, STATE CAPITOL, OKLAHOMA CITY, OKLAHOMA 73105 (405) 521-3921

TESTIMONY OF ROBERT H. HENRY, ATTORNEY GENERAL
STATE OF OKLAHOMA

Mr. Chairman, members of the committee: I thank you for the opportunity to address you today, both as the Attorney General of the State of Oklahoma and also on behalf of the National Association of Attorneys General Agriculture and Rural Legal Affairs Committee. I also want to take this opportunity to thank the senior senator from Oklahoma, Senator Boren, for his attendance and address to our committee at its recent meeting in Oklahoma City. Attorneys General are deeply involved in defending the rights of the citizens of their states, and in this role offer this Committee a powerful alliance in protecting the rights of farmers and other citizens. We appreciate the Committee's recognition of this fact. On the other hand, if the noble intentions of this Committee are frustrated by unintentional bureaucratic inefficiencies, or gaps of understanding, Attorneys General may often find themselves in court suing federal agencies. Since I believe the desires of this Committee and the state Attorneys General are the same, it should be beneficial for us to work together. We thank you again for making that possible.

The Agriculture and Rural Legal Affairs Committee of the National Association of Attorneys General was created three years ago in response to the family farm crisis which was affecting many agricultural states which are members of the Association. The Committee has as its members states such as Minnesota, North Dakota, South Dakota, Illinois, Iowa, Kansas, Nebraska, Colorado, Mississippi, and Oklahoma. I am here today, not only as the Attorney General of Oklahoma, but as the Chairman and a member of the National Association of Attorneys General Agriculture and Rural Legal Affairs Committee. I have been encouraged by the members of that Committee to relate to you the concerns of not only the State of Oklahoma, but the states who are members of the Agriculture and Rural Legal Affairs Committee.

Senator Boren attended the fall meeting of our Committee in Oklahoma City and spoke with us regarding his concerns about compliance with the Agricultural Credit Act of 1987. The remarks and insights he shared with our committee were invaluable. Interestingly enough, the Committee's scheduled meeting was conducted only a few days after news that the Farmers Home Administration would begin delivering 45-day letters to distressed Farmers Home borrowers. This

coincidence in scheduling resulted in a meeting which proved to be very timely. The information shared at our fall meeting proved to be at the very heart of the concerns facing this Subcommittee today.

During the Agriculture and Rural Legal Affairs Committee meeting, we received a message from Mr. Jim Massey, Executive Director of the Farmers Legal Action Group, St. Paul, Minnesota. Mr. Massey observed:

> "...I want to acknowledge with thanks the very central and decisive role played by Senator Boren and his staff in the development, passage and implementation of the Agricultural Credit Act of 1987. Chairman Boren has steered the Credit Subcommittee through some fast and, at times, dangerous waters over the past two years, to the substantial benefit of America's farmers and ranchers. He and his staff have always been accessible and responsive to us and our clients, and have treated our concerns with a great deal of interest and respect. We wish to express our admiration and thanks to the Senator."

Mr. Massey's concerns, as expressed to us in November, regarding the Farmers Home Administration's issuance of notices to their borrowers, included the inability of farmer-borrowers to select different loan servicing options for different loans. The availability of such options is an essential component of the orders entered by Judge Van Sickle in 1987 in the Coleman v. Lyng litigation. According to the FmHA a farmer must qualify for primary loan servicing on all notes or receive it on none. The objections raised by Mr. Massey and the Farmers Legal Action Group to this policy have been presented to the court in Coleman. It appears that under Coleman, the FmHA may proceed with notices and restructuring but must stop short of acceleration and foreclosure. It remains to be seen whether this is what will actually happen.

I am certainly not an expert on agriculture matters in general, nor am I an expert on the Agricultural Credit Act of 1987. I cannot add to the Subcommittee's expertise in this area nor will I attempt to do so. But I will voice to you the concerns of many Attorneys General throughout the country and the concerns of Oklahomans.

In Oklahoma, the number of farmers receiving 45-day notices has ranged anywhere from 2,500 to 3,500, depending upon who is doing the calculating and

how it is done. We have been told that as many as 6,500 farmers in Texas and 3,900 farmers in Minnesota are receiving notices, with a total of approximately 80,000 farmers receiving notices nationwide. The numbers are large, by anyone's calculations. The potential effect of this number of farm foreclosures on the rest of the agricultural community would be nothing short of devastating, not only in economic terms but in terms of human tragedy.

The potential of foreclosure on 80,000 family farmers across the nation means thousands of lost jobs, lost homes, and lost ways of life. It means thousands of uprooted families -- families taken from rural areas of our country because they can no longer support themselves there. As markets are flooded with foreclosed - sold lands and implements, otherwise economically healthy farmers may be damaged because the value of their lands and assets diminishes. This forced migration from rural areas will have, and in Oklahoma already has had, a major economic impact. An afternoon drive through any largely rural county in Oklahoma will show the result of the farm crisis.

Some of the Subcommittee members may, at this point, be asking themselves why Attorneys General are involved in or interested in these issues. The economic and human effect of the family farm crisis on our citizens whom we are charged to protect makes the reasons for our involvement fairly obvious. But yet another impetus for this involvement exists: the fairness of the process.

As Attorney General Robert Spire of Nebraska so ably explains:

> "We are involved because the overall procedural fairness of any right afforded citizens of our states is the concern of the chief legal officer of our states. When rights are afforded our citizens by the federal government or by our own state governments, it is among our duties and roles to ensure that those rights are procedurally fair, both in their design and their application. When the process becomes unfair to our citizens, it is of legitimate concern to us."

Let me list a few of our concerns which mirror those you will hear expressed during these Subcommittee hearings. Some of these concerns you have no doubt heard expressed before today.

The first of these is timing. There could have been no worse timing for the mailing of 80,000 "45-day" letters. The decision to mail the notices immediately following the election of a new President, and in the two weeks immediately prior to the Thanksgiving holiday shows the greatest level of insensitivity I have witnessed in quite some time. It is inconceivable to me that the federal bureaucracy at Farmers Home could have possibly interpreted the intent of Congress to command such a decision on timing.

The notices began finding their way to mailboxes in Oklahoma during the two weeks immediately prior to Thanksgiving. If you sit down with a calendar, you can readily calculate that with the holidays and weekends between Thanksgiving and the first of the year, the farmer, in reality, has much less than the full 45 days in which to respond. The sending of 80,000 notices resulted in an immediate overload of the already limited resources available to American farmers to aid them in both understanding and completing the two-inch-thick application packet they received.

For some reason, we were lucky in Oklahoma. Several months prior to receiving word of the Farmer Home notices, my staff had begun working with a local law school to sponsor a continuing legal education course for farmers and their legal counsel. The course was conducted in conjunction with the Oklahoma City fall meeting of the Agriculture and Rural Legal Affairs Committee of the National Association of Attorneys General, and approximately 350 farmers and their counsel attended. Two weeks following our first course, a coalition of farm organizations including the Oklahoma Farmers Union, Oklahoma Farm Bureau, Community Bankers Association of Oklahoma, Legal Aid of Western Oklahoma, Oklahoma Association of Electric Cooperatives, Oklahoma Cattlemen's Association, Oklahoma Wheat Growers Association and Western Farmers Electric Cooperative, joined with our office to offer a farm credit conference to Oklahoma farmers. Approximately 450 farmers attended that conference. The Oklahoma Department of Agriculture, the Oklahoma State University Extension Service and others later presented a teleconference seminar on completion of the FmHA application forms.

Throughout this education process, the Ag-Link Coalition, our Oklahoma farm advocates, were conducting daily one-on-one seminars, walking literally hundreds of Oklahoma farmers through the

application packets and giving them invaluable individual assistance in completing their applications.

The result of this coordinated effort toward education is that, by early counts, approximately seventy percent (70%) of the Oklahoma farmers receiving 45-day letters have either made payments or otherwise resolved their loan problems or have applied for loan restructuring. Contact with our State Director of Farmers Home indicates that our return rate, at least in the initial stages, may be anywhere from five to ten percent (5 - 10%) higher than surrounding farm states. Our initial information indicates, however, that nationally only ten to fifteen percent (10 - 15%) of the farmers who received packets have responded.

Not only did the timing of sending 80,000 packets just before the holidays result in an overload to already strained agriculture education and financial planning resources, it produced, I am quite certain, an unnecessary emotional strain on the farmers receiving the packets. When the usual strains of the year-end holidays are coupled with the potential of losing farm, home and livelihood, the combination can be devastating.

The poor timing of the mailing was exacerbated by the complexity of the forms themselves. I approach the forms due on April 15 of every year with great terror. I can easily imagine what the farmers of our states are feeling when faced with these Farmers Home forms. As Attorney General Spire stated: "I have two degrees from Harvard and I have trouble getting through the forms." The complexity of the forms, the time squeeze, and the emotion of the issue all combine to result in a process which concerns Attorneys General across the nation. When earnest and sincere individuals like those in our agriculture communities get frustrated by laws they cannot understand, contempt for the law is born.

We have been encouraging every Attorney General in the country, not just those who are members of our Agriculture and Rural Legal Affairs Committee, to join with farm organizations and advocates in their states to try to educate farmers and their legal counsel on the issues involved in compliance with the Agricultural Credit Act of 1987. We have been in continued contact with farm advocates and the Farmers Home offices within our states in order to monitor the process and the fairness of the process. We have

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opened our offices to farmers in our states and encouraged them to bring their questions and concerns to us so that we may not only have a better idea of how well national policy is being translated at state and local levels, but also have a better idea of the overall fairness of the process.

We are interested in the outcomes and are deeply concerned with the issues. We will continue our monitoring of Farmers Home. We want and will push for continued dialogue with the Farmers Home Administration and will report to this Subcommittee the problems we uncover.

On another issue, these hearings are designed to monitor the Farmers Home Administration compliance with the Agricultural Credit Act of 1987. We must not forget that the Farm Credit System is still actively pursing foreclosure on many of our farmers. Their compliance with the Act is as important as that of the Farmers Home Administration. It is critical to note that at this time the Farm Credit System is operating with only one board member. This situation must be remedied as quickly as possible for it leaves the member institutions of the Farm Credit System without leadership, direction or accountability.

Returning to the Farmers Home Administration, I would like to outline some areas of continued concern and perhaps some possible solutions. The early response figures to the 45 day letters indicate a very low nationwide response rate. Many groups, including members of Congress, have requested that the Farmers Home Administration extend the 45-day deadline for submission of completed applications for restructuring. The response of Farmers Home has been less than acceptable. Their "Rule of Reason" response offers as many questions as existed before the requests for extension were made. Not only should the 45-day deadline be extended, there should be some method for follow-up with those farmers who did not respond to their 45-day letters.

We urge you to examine the substantive issues concerning the forms and instructions which have already been raised by farm advocacy organizations. These issues involve confusion about Farmers Home Administration requirements of unit price lists, yields, five year histories, bankruptcy and third-party forms. We offer as a possible solution to this confusion that Farmers Home be required to provide a supplemental information packet to farmers explaining their requirements with less confusion; and

that Farmers Home be required to work with farmers whose responses indicate confusion about the requirements.

One of the consistent complaints we hear, not only in our office, but from other Attorney General offices, is that some state and local offices of the Farmers Home Administration could use an attitude change. In order for the restructuring process to be fair and to actually work to save family farms, which was the intent of Congress, the bureaucracy must be responsive. Farmers who do not initially qualify for restructuring should be allowed the opportunity to work with their state and local Farmers Home officials in an effort to do everything possible to restructure their loans.

We also suggest mediation as a solution. In Oklahoma, we are fortunate enough to have a legislature which has responded to these needs with an agriculture mediation program. Other states, such as Minnesota and Iowa, have instituted mandatory mediation programs. However, a large number of states remain with absolutely no mediation in place. Perhaps this is a good time to suggest a national mediation law for agricultural loans. Minimally, Farm Credit System institutions and the Farmers Home Administration should be required to involve other creditors of the farmer in at least an informal mediation of the farmers' debts.

I will take this opportunity to advise the Subcommittee that a number of states involved with the Agriculture and Rural Legal Affairs Committee of the National Association of Attorneys General have recently joined as amicus curiae in the Harper v. Federal Land Bank of Spokane case currently on appeal to the Ninth Circuit. The issue involved in our amicus brief is whether the Agricultural Credit Act of 1987 implies a private right of action for farmers to enforce their borrower rights granted under the Act. We feel that the answer to that question is a resounding yes and that the legislative history of the Act supports our position. It is possible, however, that Congress will simply have to be explicit in its grant of a private right of action to farmers under the Act. We encourage Congress to put the matter to rest once and for all.

For other issues, it is simply too early to tell. It is too early to tell if the DALR$ program -- the Debt And Loan Restructuring System computer program -- will work or how it will work. It is too early to

tell if the "good faith" requirements will be arbitrarily and capriciously applied by state and local offices. It is too early to tell how many of our farmers will be allowed to restructure and how many of them will lose their farms and their homes. It is too early to tell the lasting effect on our states and our local communities if the restructuring rights granted to our nation's farmers by the Agricultural Credit Act of 1987 are not fairly and reasonably applied.

I assure this Subcommittee that the organization I represent here today will remain involved in these issues. I also assure this Subcommittee we will make every effort to advise you of the problems we encounter in our states. Furthermore, NAAG is willing to provide you, and the federal agencies engaged in establishing agricultural policy, with the states' legal perspective, through participation in some mechanism such as an advisory committee or workgroup. The National Association of Attorneys General is interested in these issues.

I again thank Chairman Boren and the members of the Subcommittee for inviting me to testify here today. Again, we offer both our good wishes and our assistance to you in your important task.

(Attachment follows:)

Oklahoma State Senate

ROBERT M. KERR
State Senator
District 38
STATE CAPITOL (405)524-0126
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STATE CAPITOL
OKLAHOMA CITY, OKLAHOMA
73105

SERVING
Beckham*, Custer
Harmon, Jackson*
&
Roger Mills* Counties

January 19, 1989

LETTER OF STATE SENATOR ROBERT M. KERR representing SENATE DISTRICT 38, STATE OF OKLAHOMA

May I please take this opportunity to call your attention to a very grave situation facing the people of the Great State of Oklahoma.

As a member of the Finance, Agriculture and Appropriations committees, and being Chairman of the Agriculture Committee in the Oklahoma State Senate, I have heard testimony of many people concerning economic conditions in our state and the impact resultant thereof.

During the last several years, Oklahoma, like other agriculture and energy states, has experienced an extreme amount of bank failures. Thirty three in 1987 and twenty eight in 1988, just to mention the last two years. These were primarily the result of the drop in energy values and the drop in the real estate values, both farm and city. I might say that when these loans were made (the loans that got those banks in trouble), they were not bad loans. They became bad due to factors completely beyond the control of the farmers, oil men, home owners, real estate operators and bankers involved. Factors and policies that were being developed and carried out in places far from Oklahoma like Washington, D. C., the Mid-East countries and many foreign agricultural countries. There is enough blame to go around, but that is water under the bridge - we need and are asking your help in finding answers to the pressing needs our state and citizens face.

We in Oklahoma have made the commitment to stay the course - to bring this state back to the position of prominence that she and her pioneer spirited people deserve.

There have been many charges that those involved and charged with the responsibilities of working through the problems in the financial area are requiring such conservative lending practices of those banks and institutions making loans, that people who are willing to make the investment in the future, cannot get the capital to do so.

In the area of farm credit alone - approximately 2700 notices have recently gone out to delinquent borrowers. Hundreds of these people have nowhere to turn. We would ask that every effort to restructure those

farmers be made to the extent that the law allows. We do not believe that is happening now as a general rule. There are instances where a waiver of interest and/or major lowering of interest would enable a distressed farmer to cash flow. From visits with those involved, it does not seem that this tool is being used to the extent that the Farm Credit Act allows. We would request that this be done.

We are very fortunate that our State Attorney General Robert Henry and his staff, our State Department of Agriculture, the Conference of Churches and others have all been involved in helping instruct those receiving the delinquent notices.

To bring ourselves back economically, we must invest in the future. Investments in equipment to replace that worn out, in plants and products that will let us compete.

What we need is available capital - long term capital that allows for restructuring of some present debt, and at a rate that will allow us to repay that debt based on prices we receive in the market place. Interest rates in that relation and in relation to inflation are far too high.

We as Oklahomans are appreciative of the efforts of Congress in the Farm Credit area. However, if we are to be successful in saving family farms and diversifying our economic base in the State of Oklahoma, we must go further - much further.

We need and would suggest a federal program whereby capital would be made available directly from the United States government to those states (agriculture and energy) who are suffering such as Oklahoma and Louisiana. It could be called the "Distressed State Re-Investment Act."

These funds could be made available through normal lending channels at 3 per cent with the lending institution processing the loan receiving 1 per cent processing fee. The length of such loans should be up to 20 years.

We believe such a program would not cost - but would pay. Creating thousands of jobs for people who would be paying taxes and spending their earnings along the main streets of our cities and towns.

I appreciate the opportunity to bring this problem to your attention and would be willing to furnish corroborating documents.

Sincerely,

ROBERT M. KERR
State Senator - District 38

RMK:jd

Senator BOREN. Thank you very much, Attorney General Henry. I appreciate the comments that you have made, and the suggestions, and I hope—and will mention this again—Mr. Johnson is here, and has heard the comment about the National Association of Attorneys General.

But I would think in reviewing the forms, and other procedures, that it would be very helpful if the group, perhaps the committee that especially focuses on agricultural issues of the National Association of Attorneys General, could be called upon by the Farmers Home Administration, and perhaps could have some informal consultations and informal sessions together, particularly with the legal staff and the top administrators there at the Farmers Home Administration to go over some of these mutual concerns and share expertise, share suggestions, perhaps, as to how the forms and procedures could be simplified and improved.

You mentioned also in your statement the private right of action. I will tell you, and I understand that this is being resisted now, and that there may be some litigation about this.

It is my understanding throughout the discussion of the Farm Credit Act, that there was a private right of action.

In fact I had explicitly provided for it early in the first provision of my bill, and then in the course of discussion.

Witnesses that appeared before us from the Adminstration, the discussion ensued, indicated that it was not necessary because there was an inherent right of private action.

And finally, in the discussion we had—I remember it was Senator Burdick on the floor with an amendment that he offered, and later in the Conference Committee on this legislation, where there was some langauge that appeared to narrow the private right of action.

It provided private right of action only for those borrowers that were current. A decision was made explicitly to drop that language because we felt that we were narrowing, not enlarging, the private right of action.

In other words, the private right of action was inherently there for all. For us to talk about giving it only to those that were current on their loans would narrow it, since everyone had the right of private action. It was the assumption. I stated that in a colloquy with Senator Burdick on the Floor.

It was stated, again, by me, and others, as we acted on this matter in the Conference Committee. But to clarify it, you have acted, and being the attorney general in my State, in some ways act as my lawyer.

I wonder if you would be willing to perhaps work on preparation of an affidavit for me that I might execute, that would clarify my understanding and state my understanding of the legislative history of this matter, to show that there is indeed, in my opinion, and it certainly was my assumption throughout the deliberation—I think the assumption of the others involved .n the process—that there is a private right of action.

Would you be willing to assist me in preparing such an affidavit to set that forth?

Mr. HENRY. I would be extremely willing to assist you, and it is always an honor to serve as your attorney, Senator Boren.

Senator BOREN. Well, we will work on that and have our staff look back into the committee records and work on preparing a detailed affidavit.

Mr. HENRY. Thank you. I think that would be most helpful.

Senator BOREN. Do you have any kind of indication from talking to other States about what percentage of the borrowers—is this running 10 or 15 percent—of those that received the notices, that were not able to apply in time?

What kind of a reading do you have on that?

Mr. HENRY. I do not have any formal statistics. I have just been able to gather from, a lot from phone communication with other attorneys general.

We have heard that nationally, as few as 15 percent of the farmers have responded. In Oklahoma, our results, Senator, seem to be around 70 percent.

Senator BOREN. Have responded?

Mr. HENRY. Have responded.

Senator BOREN. Have responded. And has the 45-day period run for most of these at this point in time, or is it still running?

Mr. HENRY. It will have run for most at this time.

Senator BOREN. By the end of the month?

Mr. HENRY. Yes.

Senator BOREN. So many of them started receiving these notices in December, and, as you pointed out, with Christmas, Thanksgiving, and other holidays, some started receiving them in November. That is a difficult period of time, some of them even being gone at times.

Well, I appreciate your testimony very much. I want to give my colleagues an opportunity to ask questions, but you do feel it would be helpful if we could clarify this private right of action matter?

Mr. HENRY. Absolutely. I think that would be extremely helpful. That is a way to achieve some balance in the system and make sure the system works.

Senator BOREN. Thank you very much.

Senator DASCHLE. Thank you, Mr. Chairman.

According to my figures, the Farmers Home estimates that about 49 percent have responded thus far, but I am more interested with the 51 percent who apparently have not, and what legal interpretation the attorneys general might have with regard to their standing at this point.

What advice would you give to an Oklahoma farmer who either had not responded in total with all the forms required, or not responded at all?

Do you have advice in either case for those, and what is your interpretation of the law as you see it?

Mr. HENRY. I do, Senator. My first advice would be to respond immediately. Send something. As my father used to tell me when I was a child, and I did not understand his directions, he would say, "do something even if it is wrong, son." That something needs to be done. Send in the applications that you can. Request an extension.

If you need help with the forms, fill out the ones that you can and ask for some action.

We would just indicate that some response would be very, very important.

Senator DASCHLE. Why do you feel that way? Is there something in the law that gives you the impression, that if they responded in good faith, that they would at least comply with the spirit of the law?

Mr. HENRY. Yes, Senator, that is exactly it.

The law itself seems to require simply the request for the restructuring. Now the regulations—we all know about Government regulations, and State governments are not immune from excessive Government regulation either.

But we think compliance with the spirit of the law, that you folks passed up here, gives us an opening to go into court and try to defend the action of the farmer.

Senator DASCHLE. Well, that certainly is my interpretation as well, and I am delighted to see that someone of your standing would hold that view.

Have you discussed it with any other attorneys general? Is that their interpretation as well?

Mr. HENRY. The attorneys general that met with us in our last NAAG Agriculture Committee would share that view.

Senator DASCHLE. Very good. Thank you.

Senator BOREN. Thank you very much, Senator Daschle.

Senator Kerrey, any questions?

Senator KERREY. No. I will keep my record clear with you.

Senator BOREN. Senator Baucus.

Senator BAUCUS. Just one very broad question. So much of what any organization does or does not do is based upon the organization's attitude, and you mentioned there is a problem of attitude perhaps in some areas.

What would you do to turn that attitude around, and how would you suggest the head of the Farmers Home Administration address a question of attitude?

Mr. HENRY. That is a very good question, Senator, and I think, in a sense, it is why we elect people to offices in this country.

There is something about facing the electorate that causes one to improve one's attitude from time to time.

And I think I would try to encourage the Farmers Home to realize that we are all part of the same system, we are all part of Government in this country, and we exist not to make money or turn a profit—and we do not exist just to get bigger.

Our reason for existence is to help the farmer and try to maintain the extraordinary agricultural success that this country has always enjoyed. So I would encourage that kind of activity and I would not encourage—as I heard to my distress—the action that occurred when a leading Farm Credit System spokesman came to Oklahoma, and took that opportunity to blast the Congressman in whose district he was speaking.

I think that is pretty silly, and I informed him so when I spoke after him. We are on the same team, and I have tried to resist that temptation to just come up and bang the bureaucracy, because I know they have difficulty, too.

And we do not want to throw good money after bad. But I think we have to constantly work, as public officials, whether elected, appointed or hired, on that attitude of service to the public.

Senator BAUCUS. You are right. We all self-destruct here in the Senate in 6 years, and a little competition is good. It helps us to keep on our toes, and so forth.

Senator BOREN. Let's not overdo this now.

[Inaudible.]

Senator BAUCUS. But the slight problem is—as you point out—is, the head of the Farmers Home Administration does not run for public office. He is appointed, and he is a little bit insulated.

And, obviously, the answer is not to have everybody that heads an agency stand for election. I think that is unworkable. But it is incumbent upon all of us to recognize and realize that we are servants of the people we serve. They are our bosses; they are our employers.

I hope that the Farmers Home Administration just takes that message to heart, because the more it does, the more it is going to be satisfied that it itself is doing a good job, when it sees that people themselves are happy with the service that the agency is providing.

But that I think is where the heart of the matter is. It is a question of attitude. If they want to do a good job they will, and so it is up to them to just do that. Thank you.

Mr. HENRY. Thank you, Senator Baucus.

Senator BAUCUS. It would be your understanding that while the law mandates the 45-day period, that at least in terms of if the farmer responds, but let's say does not fill out all the forms within 45 days—as I understand the law, the law simply says the farmer shall respond within 45 days.

That could be just simply writing a letter saying I want to take advantage—a one-sentence letter.

Mr. HENRY. "Help me," for example.

Senator BAUCUS. I have received my notice, and I hereby want to take advantage of the loan restructuring program. That that is all the law requires, and that the agency, if they are requiring farmers to fill out additional forms, they would certainly have it within their discretion to allow more than 45 days for the completion of the forms.

There is nothing in the law to prohibit the agency from having that discretion to allow the farmer more time, is there?

Mr. HENRY. I believe that is correct, Senator.

Senator BOREN. Thank you very much. I appreciate your taking the time to be with us, and our next witness will be Mr. Johnson. I do hope that we can work out some sharing and pooling of expertise between the National Association of Attorneys General, Agriculture Committee, and the staff, the directors and legal staff, especially, at the Farmers Home Administration.

It would save both the State taxpayers and the Federal taxpayers' money if we could get this process working. Thank you very much.

Our next witness will be Mr. Neal Johnson, the Acting Administrator of the Farmers Home Administration, and Mr. Johnson, please feel free to have others of your staff accompany you, and I believe you have with you——

Mr. JOHNSON. Jack Hertzler, our Assistant Administrator for Farmer Programs.

Senator BOREN. We are very glad to have him with you. We understand that you are in the situation of being the Acting Administrator at this time.

We know that during transition periods it is a difficult situation, and what you do have, those that are exercising responsibility, doing it in an acting capacity. I have visited with the Secretary of Agriculture-designate, and others, about the problems and the policy issues, and have urged him to have as much background as possible, and others that will be serving in the agencies at the time that they do come in to those positions.

But I think it very important, even though we are in a transition period, since the notices have gone out, and we know that you have been administering this program, that we hear from you, and members of the committee, as we do hear from you, understand that you are in a transition situation yourself and struggling to do the best you can under these circumstances.

We appreciate your appearing before us, and we would welcome any statement that you would like to make at this time.

STATEMENT OF NEAL SOX JOHNSON, ACTING ADMINISTRATOR, FARMERS HOME ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY GLENN J. HERTZLER, JR., ASSISTANT ADMINISTRATOR, FARMER PROGRAMS

Mr. JOHNSON. Thank you, Mr. Chairman, and members of the committee.

I sincerely do appreciate the opportunity to appear before you today to discuss the progress we are making in carrying out the mandates of the Agricultural Credit Act of 1987.

Your invitation specifically mentioned the notices of loan service programs available for farm borrowers more than 180 days late in their payments. As you know, those notices were mailed in late November. Thus, the 45 days prescribed in the statute for a response expired for most borrowers about mid-January.

Our latest tabulation shows that a total of 70,747 notices were mailed from FmHA county offices between November 15 and 25.

A total of 34,719, just over 49 percent, were returned by the borrowers with requests for loan servicing. We do not have, at this point, a breakdown of the reasons why the others were not returned.

Our reports do tell us, however, something about how many borrowers apparently do not intend to continue their operations and how many still desire to continue farming.

About 8,345 notices were sent to borrowers with collection only accounts. Those are borrowers who, for all practical purposes, have sold the collateral securing their loans from FmHA, but still have some indebtedness and possibly have some repayment ability. Since we received only 1,980 responses in that category, we can assume that about 6,365 of those accounts are indeed inactive, and can become candidates for debt settlement. We estimate the overdue debt for those collection only accounts to total about $1.6 billion.

Another category with some question as to the viability of the operation is accounts accelerated before May 7, 1987, the date of a Federal court injunction.

Since only 4,289 responses were received to the 8,890 notices sent to borrowers with accelerated accounts, we can assume that a majority of those accounts also are either inactive, or the borrowers do not intend to continue farming. Those borrowers will be offered the preservation loan services of homestead protection and leaseback/buyback.

Bankrupt borrowers, or their attorneys, returned 754 notices out of a total of 7,085 that were sent.

Subtracting those three categories—the collection only accounts, the pre-May 1987 accelerations, and the bankruptcies—leaves us with 46,427 notices to borrowers who were 180 days late in their payments, and, presumably, who still desire to stay in the farming business or, at least, keep the homestead.

The responses indicate that 27,696 borrowers in this category requested loan servicing and 24,495—a responsive 88 percent—returned applications sufficiently complete for our field offices to begin processing. Some 3,201 replied but did not complete even the minimal requirements of our rule of reason policy. The latter will be considered as failing to meet the requirements for the complete loan servicing package and will be offered the leaseback/buyback or homestead protection program.

This leaves the question of what to do with those notices that were returned as undeliverable. Because we think some borrowers may have refused delivery of the certified mail by which the notices were sent—for whatever reasons—we have directed that the same information be sent again, but by regular mail. Borrowers who might have been apprehensive about accepting certified mail will have another chance to take advantage of the servicing opportunities. They will be given a 45-day period in which to respond to those notices.

Now, Mr. Chairman, we are at the point where our field staff must analyze those applications that have been received, so that those borrowers can receive a decision within 60 days as set forth in the statute. I am sure you understand the complex nature of many of these individual cases, especially those that have been in a questionable status for a considerable period of time. And we are speaking of years. It will be a challenge to all the parties involved to develop a workable plan. And, since we are now nearing the end of January, we are aware that farmers need those decisions promptly in order to make their plans for the coming crop-year.

We should also remember that we have 183,000 borrowers who are not delinquent or in technical default, who will need our attention to process their applications on a timely basis for spring planting.

To assist the field staff and to ensure proper implementation of the Ag Credit Act, I am sending loan specialists from the National Office out to the States over the next several weeks. They will be traveling widely for on-the-spot reviews and consultation.

All of us at Farmers Home are committed to working closely with our borrowers in carrying out the mandates of the act in an efficient and compassionate manner. Our efforts are, and will be, directed toward keeping our borrowers on the farm to the fullest extent possible.

Thank you. This does complete my formal statement. I will be happy to answer any questions you might have.

Senator BOREN. Thank you very much, Mr. Johnson.

As I understand it, you are sending by regular mail the same notice to those who did not receive the certified letter?

Mr. JOHNSON. That is correct. That were returned to our offices.

Senator BOREN. As unreceived?

Mr. JOHNSON. When we sent certified mail, and returned to our office as not delivered.

Senator BOREN. Not delivered?

Mr. JOHNSON. As not delivered.

Senator BOREN. Now how many of those were there?

Mr. JOHNSON. There were about 8,000—no, that's right. We do not have that number.

Senator BOREN. You do not have that number yet.

Mr. JOHNSON. We did not get that in our survey. I am sorry.

Senator BOREN. All right. Now when did the new notices by regular mail go out to this group?

Mr. JOHNSON. I sent a communication to all of our offices just this past week, I guess it was. So about a week ago, advising our offices to again send the entire information to those, and telling them how to document the file as it relates to the returnable notices, and also indicating that the 45 days would commence—I believe we gave a 3-day mailing time, isn't that right, Jack?

Senator BOREN. Right. From the time of mailing.

Mr. JOHNSON. Three days. That is right.

Senator BOREN. But there are a substantial number you feel we are talking about, some thousands rather than just hundreds, probably?

Mr. JOHNSON. Well, we are not sure, but we did get feedback throughout the country, that they were being returned. So, it was enough that we felt we should take some immediate action.

Senator BOREN. Felt you should issue another notice?

Mr. JOHNSON. Yes, sir.

Senator BOREN. Now let me ask about the 45-day period. As you know, section 604 [see p. 116, Senate Report 100-230] of the act says that, "The Secretary shall consider a farmer program borrower for all loan service programs if, within 45 days of receipt of the notice required in this section, the borrower requests such consideration in writing."

Now it is my understanding, this means simply that the farmer return a letter saying I have received my notice and I hereby request an opportunity for consideration of all loan service programs.

It is my understanding that in addition to just receipt of the letter back from the farmer saying "I want to be considered," that the Farmers Home Administration is also requiring that several forms which you send to the farmer must also be completed within that 45-day period. Is that correct?

Mr. JOHNSON. Yes, sir. There is a requirement and I do not consider it several forms, but there is some information that we feel that we should have in addition to someone simply dropping by the office and saying, "I plan to file" or writing a letter in saying, "I want to file for these servicing rights."

That package, as you know, does contain a considerable amount of information and we do realize that farmers needed some help on that.

But we did go back to our people in December with what we are referring to as a rule of reason, and in that one, we are saying the minimum things that the person should get to our office to show good faith, and that they are serious—one of them is basically a one-page application per loan, or for the servicing action.

So they need to fill out the basic application form, which they are familiar with. This is something they have been doing year after year, and it is the time of the year that they normally do those things.

Plus the other thing that we ask them to do is develop a farm and home plan, start getting their financial information and get a farm and home plan in.

This is not a new requirement. It is something, at this time of the year, they have been doing year after year in the past.

Certainly there may need to be some adjustments made to it after we get it, but we are asking them to basically give us some very basic financial information on that farm and home plan.

And then the other item that we ask them to send us is a one-page form that they are to sign, acknowledging that they received the package of material, and that they are interested in some servicing rights.

So basically, all they have to do is check a box and sign that. Now I guess I do not consider that a considerable; there is a lot more activity to be required.

So if they got that much in, then we said, hey, our county supervisors make that decision. If those people have been working in good faith with you, and again, our goal is to do everything to try to make this thing work, because if it does not, we are still not through.

We still have the preservation rights, and a lot of other activities, and we have a lot of work to do in this 60 days that we have to complete our chores.

So this is basically our position on that.

Senator BOREN. Well, you do feel, then, that you have discretion. Obviously you say you are operating a rule of reason; you have given the county offices a directive to use a rule of reason. You do feel that you have discretion, then, to allow more time beyond the 45 days.

If they have sent in a letter, but they have not completed all their forms that you have sent them, you do feel you have discretion, administration discretion, since the law only requires one thing.

The law only requires that they send you back a written statement of their desire to be considered.

That could be a one-sentence letter.

Mr. JOHNSON. That is right, however, you must interpret that language in combination with all the other requirements which the act contains to carry out the loan servicing and restructuring options available to borrowers.

Senator BOREN. They comply with the law by doing that. Since any additional requirements that you are putting on are regulatory

requirements that are at the discretion of the agency, administrative discretion, you would then have discretion since you are saying, we are giving them a rule of reason to give some more time, or work with some people to improve the forms, or if they are inadequately filled out during the 45-day period to continue to work with them, you are doing that then?

Mr. JOHNSON. We are using all the latitude that we think we can legally and comply with the statute.

Our Office of General Counsel did review this, the statute, and gave us the opinion that we had no legal authority to just make a blanket extension of the 45-day period.

We did get that ruling. So within the confines of that, we have tried to work some way to be, again, show as much compassion, and do as many things as we could and still be consistent with that.

Senator BOREN. Well, I think it simply says that if the borrower, within 45 days of the notice, the borrower requests such consideration, that you then must give him this consideration.

I do not know that it says you may not give him such consideration if he does not. Do we have a copy of the exact wording of the statute in that section here?

But the main thing would be that if you have—let me see where is that exact wording.

"If, within 45 days of receipt of the notice required in this section, the borrower requests such consideration in writing"—let's see—"The Secretary shall consider a farmer program for all"—so it is mandatory for you to consider it if they request it within 45 days, in writing.

That is mandatory. But it does not say here, or it does not have any prohibition on you to not consider those within 45 days.

And it certainly would not have any prohibition on your giving an additional discretionary extension to those who have written you a letter saying "I want this" but have not finished filling out the forms required, as I read this.

Mr. JOHNSON. Well, that is a little bit different from the interpretation we have received from our Office of General Counsel, and——

Senator BOREN. Well, of course we wrote the law, and the law says——

Mr. JOHNSON. I am certainly not a lawyer and I am not here to debate that issue with you, Mr. Chairman.

Senator BOREN. One of the things we feel strongly about around here is that the Constitution does say we will make the law. That is a responsibility and a duty. And we made the law, which says, "The Secretary shall consider." It does not say anything about when you shall not. It simply says you have an affirmative duty to "consider a farmer program borrower for all loan service programs if, within 45 days of receipt of the notice required in the section, the borrower requests such consideration in writing."

Now it does not say, "shall have filled out forms, that the agency is hereby authorized to issue in the regulation of this Act." It just says if they shall request it in writing.

So I would urge you to go back and have the lawyers look at this again, and as you have fairly done with those who returned—or

where the certified letter was returned as nondelivered, I would urge you to go back and look at those situations where a letter was received, where some communication was received from the borrower, that said I wish to be considered, but perhaps in the opinion of the agency, all other forms which the agency invented, we did not—those forms are not in the law. The law just simply requires the farmer to say, in writing, that he wishes to have it, have consideration.

That you would give consideration to a further extension to those that did not complete the forms on time. I think that is something that should be considered since the forms are really the creature, an invention of the bureaucracy, and I do not use that term pejoratively. We have to have bureaucracies and we have to have implementations of laws.

We obviously are not the implementing agency. You are. But I would urge that that be considered, and that the legal counsel reconsider that because, just speaking for myself—and other members of the committee can speak for themselves—I certainly do not think we intended this to be mandatory—we meant to say, look, if they tell you within 45 days they want to be considered you have to—that is a mandate of law, that is a requirement of law. You have to consider them for all of the loan programs available.

But by that, we did not mean to say you do not have any discretion to give them additional time, nor do I think we meant to mandate that they would have to fill out every form that was sent to them.

Because under that theory you could send them 100 forms. I am not saying you have. You could send them 100 forms and say, if you do not get all these filled out within 45 days—we meant to just keep it very simple, for the farmer to simply say "I want to be considered."

And then, I think you can continue, during the 60-day period in which you are evaluating their requests. They obviously have a duty to cooperate with you on a good-faith basis to fill out the forms.

But I think that serious consideration should be given, especially given the fact that they came at this time of the year, when some people were traveling, and there were other disruptions, and families were getting together, and the rest of it, that that might be considered.

So I would urge you to give that some thought, and ask the General Counsel to take another look at that to determine what discretion you would have in that area.

Mr. JOHNSON. Well, certainly, I think we are in full agreement as to what our goal is, and that is to assist those that are worthy and have shown good faith, and to work with them to the fullest extent possible.

I think we are doing that. Certainly, if any cases come to our attention we will be happy to look into it, where someone, over a personality conflict or something—and obviously as many employees as we have, there is a potential of something happening like that.

By and large, I think that those farmers that really are sincere and want to work with us, and cooperate and do something—I cannot conceive, barring the fact if they did not get their informa-

tion, that they did not have ample time to at least provide that minimal requirements by, as I have outlined in our rule of reason here.

Senator BOREN. Let me just say, I understand you have the rule of reason, but, as you said, this can vary. We are all human, and how some person interprets a rule of reason can differ from another. There is no way to standardize that.

And unfortunately, also being human, the history of a particular local officer with a particular borrower—it is very hard for us to put aside our own personal evaluations of whether somebody is really trying hard or not trying hard, or being cooperative, or not cooperative.

That is the reason I would suggest that in addition to operating your rule of reason you might consider something like an automatic 2 additional weeks, or something like that, for those who simply did send a written notification back saying we want to be considered, but who did not, in the view of the local supervisor, satisfactorily complete the forms.

That would at least give you some degree—you might call it a safety net—to put under your rule of reason, to assure somebody that if they had a personality conflict, or something else, they would at least have automatically, that additional time.

If they actually gave you notice back with a letter or something else—maybe not all the forms are completed—that they wanted to be considered within the 45 days because they would have met the minimum standard of the law, at least as I would read it.

I will turn now to Senator Kerrey.

Senator KERREY. Thank you, Mr. Chairman.

Are you restarting the clock on the letters that you sent out some time last week? What sort of procedures are you going to follow for the letters that were sent out last week?

Mr. JOHNSON. Are you referring to those that were undelivered because of our initial sending out by certified mail?

Senator KERREY. That is correct. Let's assume that I received a letter from you last week and I get it in a week from now. I fill out the three forms that you have determined using the rule of reason, it qualifies me as being—as you have used the language—worthy and following through in good faith, even though that may not quite be in conformance with the law.

You have defined worthy and demonstrating good faith as meaning I have to fill out these three forms. Let's assume a week from now I have filled out those three forms and get it in. Do I qualify for all programs?

Mr. JOHNSON. Those that we are sending out another notice, we have to operate under the assumption they did not receive anything from anybody.

So the clock starts over on the 45 days for those people that it was totally undelivered and we have no evidence they ever received the information. Now the balance of these we assume did receive the information.

Senator KERREY. It is similar, is it not? Some friends of mine who, when they received their notice of induction to the Korean War, simply threw it away and thereby removed themselves from the responsibility of having to go to that war.

Is that what you are saying to me? That had I ignored the original letter entirely, and assumed that I did not receive any, that I actually would be in better standing than the 3,200 people who returned a letter but did not do it in accordance with your higher standard of being worthy and in good faith?

Is that correct?

Mr. JOHNSON. That is correct, Senator, because——

Senator KERREY. Wouldn't you suggest—does not just common sense cause you to conclude that the average citizen out there, when seeing that sort of circumstance, would cause them to view the bureaucracy as something on the order of something created by Lewis Carroll?

Mr. JOHNSON. I am not sure how we can quantify or know why people choose not to respond to the certified mail, and the other additional communications that went to them in a reasonable fashion as to those basic documents that has been required of them on an annual basis at that time of year for many, many years.

So, you know, it's hard for me to conceive—to me, those are a different class than those people that we mailed something to, but was returned to us, because there, we can quantify those.

We know which ones did not receive it. The motivation. Frankly, I am certainly in hopes, and by the percentage of those that completed those returns, we are up to 88 percent of those in the other category that actually returned. That is a pretty high percentage of those that we think are still active in farming.

We think about 88 percent of those did return the information on a timely basis. So I am not sure that we have a real large number in this category, but how you make that determination, we are relying on our county supervisor with our use of reason, if the person has acted in good faith and worked with him, which communication is a key there.

If that has happened, then we should go ahead and receive those and process them.

Senator KERREY. May I ask you a question about the demonstration project? Are you familiar with the attachment 1 regulations for the demonstration project?

Mr. JOHNSON. Yes, sir. Somewhat.

Senator KERREY. Is it fair to say that with instructions being given to the St. Paul and Omaha Farm Credit System under this section 5 regulation—is it fair to say that if I am a potential buyer of property, a farmer who wants to buy property, that I could go through the process of actually submitting an application—but that the Farm Credit System, St. Paul and Omaha, would have the right to continue to go out and look to sell the property under the exemption granted?

Mr. JOHNSON. Well, certainly we would qualify—we are working very close, we have a memorandum of understanding with, just recently, St. Paul and Omaha, and Louisville offices of the Farm Credit System, and we look forward to working with them.

We have funds set aside. We have regulations that were just recently put in place, and we have funds set aside, and we are well prepared to start working with them to move through on any of their inventory properties.

You have to keep in mind that these borrowers must be prepared to pay 15 percent down, but we are prepared, we have money set aside for that purpose, to work with the Farm Credit System. So we are ready to make that operational.

Senator KERREY. But if I put 15 percent down, what does it take, 60 to 90 days to process all the paperwork and get the application all the way complete?

What I am talking about is during that 60- to 90-day period, does the Farm Credit System of Omaha and St. Paul have the right to continue to go out and look for a buyer who will pay a higher price?

Mr. JOHNSON. I am not sure. Obviously you would have to ask them that question as to what other shopping they may or may not do. I do not know of any. But once we have identified a property and a borrower, we will be working, so they should be holding that property aside until such time as we can work through and qualify that borrower and everything.

Senator KERREY. Would you look into that just a little bit, because it seems to me that if that is the case it would provide a fairly big disincentive to a potential borrower, if the Farm Credit System could continue to look for somebody who would pay a higher price.

[The material follows:]

The eligible Farm Credit Banks and FmHA have entered into operating agreements that address the issue as follows (the Farm Credit System is referred to as the "Bank" in the agreement):

"V. The Bank reserves the right to market and sell its acquired property to any qualified individual until, under the terms of the Demonstration Project, FmHA has determined the eligibility of the borrower and the suitability of the property, and a purchase agreement has been executed between the eligible borrower and the Bank."

Mr. JOHNSON. I would certainly be happy to look into it, but I would fully expect, in accordance with our memorandum of understanding, and our close working relationship with them, that once we have a match on a piece of property, and a potential borrower with us, that we would work that through to conclusion before that property could ever be considered by anyone else.

Senator KERREY. Thank you.

Senator BOREN. Thank you very much, Senator Kerrey. Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman.

I would like to follow up on the line of questioning that you began with Mr. Johnson.

You were talking, Mr. Johnson, about the rule of reason, and as I understand—according to your rule of reason—whether it was an internal memo, or whether it was an understanding among your supervisors, there were four forms required.

There is a tremendous amount of confusion out there, by my farmers, and I guess farmers across the country, about which four forms are required.

They were never told which four forms are required, and as a result, by your own definition, failed the rule of reason simply because of that lack of communication.

Will you clarify that?

Mr. JOHNSON. I was checking to see if we had actually made a mail-out there. Of course there was extensive communication, obviously we utilized the media, we had press releases, and we utilized the media to the fullest extent.

We tried to work very closely, and I might add, feel that we have received some very good assistance from many farm advocacy groups that we have been working through and developing these regs, and through this process.

And we did send a communication to all of our employees, and we did put that responsibility on our county supervisors to contact those borrowers and let them become aware, to be sure they were aware, and we also did it with local press releases. So there was a lot of methods by which they had an opportunity to be informed. And simply if they would call in, you know, and simply say to Farmers Home, hey I'm having difficulty, I cannot seem to get these forms worked out.

If they simply call in their office, and alert us at all, that they are having any problem meeting the deadline, then we can reiterate deadline information such as this.

But again, these documents, these four documents that you have just made reference to, again, it's the application for Farmers Home servicing which is all these people are very——

Senator DASCHLE. But Mr. Johnson, in the time I have, let me just tell you: If you felt it was so important that they fill out those four documents, how often is it that a Federal agency has to rely upon press releases and the news media to get such pertinent information in the hands of the borrowers?

If you thought it was so important, why didn't it go in with the notice itself? Why didn't you say: In order to comply—and I want to get to your authority for asking for that compliance in just a minute—but why didn't you specify in the letter, we need these four documents filled out?

Mr. JOHNSON. We did specify that in our supplemental.

Senator DASCHLE. You did not; it is not in the letter to the farmers.

Mr. JOHNSON. Not in the letter to the farmers?

Senator DASCHLE. No.

Mr. JOHNSON. That is possible. We did not just rely on media—I mentioned media and advocacy groups—of assisting in spreading the word on this.

Senator DASCHLE. But so much is critical here——

Mr. JOHNSON. But we did rely on that county supervisor. We did put the responsibility on that county supervisor to contact those that they had not heard from and——

Senator DASCHLE. That is the breakdown in communication. You cannot really put it on the supervisor. You are telling him he has to call every one of the borrowers in his county and say, look, I need those four things, or send a letter out? I mean, you are putting a tremendous amount of responsibility that obviously did not get to the borrower.

Again, going back to what the Chairman was specifying, I do not see anything, I do not see a word in the law, or even in the report language, that gives you the authority—with all due respect—for requiring those four items within that 45-day period.

Now the Chairman has said that is his understanding as well, and he said he was only speaking for himself. I would really like to have an official clarification to the subcommittee, as to your interpretation, under the law, with regard to the requirements by the farmers in meeting their obligations under the law.

Could you provide that, specifically.

Mr. JOHNSON. I would be happy to.

[The material follows:]

On the question concerning the requirements for farmers to meet their obligations under the law, the Department has concluded that the statutory language in sections 605 and 615 of the Agricultural Credit Act of 1987, when read together, requires borrowers to submit sufficient information to FmHA upon which to base its decision on loan servicing, including restructuring, within the 60-day statutory timeframe.

The Act requires FmHA to give borrowers a Notice containing all information on loan servicing programs, including restructuring, and the forms they need in order to reply within 45 days. Within 60 days of receipt of an application, FmHA must make the necessary calculations, and a decision based on those calculations, and communicate it to the borrower.

The Department believes that the Act, when read in its entirety, sets forth a coherent system which makes certain demands of the borrower as well as FmHA so that each may fulfill its statutory requirements.

Senator DASCHLE. The last question I would have relates to your statement, that you did not have the broad authority to extend the deadline beyond 45 days. Frankly, I do not read it that way. I think you do have the authority.

Farmers frequently ask me this question. I would like to have your perception of the interpretation of the law?

Apparently you felt you had broad authority to extend the 150 days to implement the bill, because you waited until mid-November in order to promulgate the regulations.

Now you have 60 days to process the applications, and my hunch is, from what you have been alluding to today, is that there may be some understandable reasons why you may not be able to meet that deadline either.

So apparently there is some broad authority in your interpretation of your adherence to the law, but you do not, as you said, have the broad authority to interpret the flexibility with the law with regard to the farmers.

That is a dichotomy that I really wish you would explain.

Mr. JOHNSON. All right, sir. On the 150 days, certainly I think you recognize the very complex set of regulations that we had to develop and the clearance processes, the further reviews that were asked by many Members of Congress, and others. The opportunity to be involved with advocacy groups and to get the comment periods.

The 150 days—you know—I do not know how anyone could have met that, with my knowledge of getting regulations through.

Senator DASCHLE. Well, Mr. Johnson, that is exactly the point the farmers are facing. They do not know, either, how in the world they are going to comply with your rules of reason, and everything else, in 45 days, but they are being told they are in violation of the law if they do not comply.

So there does not seem to be that flexibility there, and excuse me for interrupting, but my time is up, and I really need to make that

point. You may have an additional comment. I did not mean to cut you off.

Mr. JOHNSON. Well, I will simply say the amount of work required to comply with the rule of reason by the farmer is very insignificant, if you will, compared with the amount of work the Farmers Home Administration agency in meeting that 150-day period, in developing all of these regulations, and going through the required clearances. That is not an excuse.

We feel that we have a high rate of return from those people that did comply with the 45 days, and we feel that with our rule of reason, those people that were really serious about complying with this, that that will be implemented.

If we know of cases, if we find cases where our people have not shown that they gave appropriate consideration to these people, we will be happy to reexamine those cases.

Senator DASCHLE. I am well over my time. Thank you.

Senator BOREN. Thank you, Senator Daschle. We have been joined also by Senator Exon of Nebraska who, while not a member of this committee, has a great interest in this matter and sat in often during our deliberations on the farm credit legislation.

I first came to know him when he was Chairman of the Agriculture Committee of the National Governors Conference, when I first became a Governor, and his interest has extended back for many, many years.

I know he stepped out of a meeting going on at the Commerce Committee, and hopes to ask a question. I wonder, Senator Baucus, would it be all right with you if we defer to him, just for a moment, so that he can ask his question, and then return?

Senator BAUCUS. I am ever so happy to defer to my friend and colleague.

Senator BOREN. Senator Exon.

STATEMENT OF HON. J. JAMES EXON, A U.S. SENATOR FROM NEBRASKA

Senator EXON. Mr. Chairman, thank you very much, and thank you to the members of the subcommittee for allowing me to step in and make a point or two.

I am also pleased to sit at the table for the first time with my great friend and colleague, Senator Kerrey from Nebraska, who is a member of your subcommittee, and we are very proud that he is a member of the Senate Agriculture Committee, and I know he will make an excellent contribution to this group of very fine people.

First, I would like to ask Mr. Chairman, that a detailed statement by Mr. Gene Severens of the Center for Rural Affairs in Walthill, Nebraska be entered into and incorporated as a part of the hearing record.

Senator BOREN. Without objection, that will be ordered. We have great respect for him, and knowledge of the work of the Center, and we will enter this into the record.

[See pages 52–67 for Eugene Severens prepared statement and attachments.]

Senator EXON. I would simply like to say, and point out that Mr. Severens has been, I think, one of the real outside experts on this whole proposition.

I think he has been of immeasurable help to this committee, and certainly to myself as a Senator from Nebraska, in trying to move this thing forward in an expeditious fashion.

He brings up several points, Mr. Chairman, that we think are very valuable, and I guess the concern that we have is—it has already been expressed by other members of this subcommittee—is that we have not moved as rapidly as certainly Congress intended.

And certainly from what I hear in the short period of time I have been in the room, it indicates to me that there may not be as sympathetic an attitude as we would like to see, those of us who had a part in pushing this legislation through.

I guess that we would just like to ask that there be more of a forthcoming attitude from the Administration in the implementation of this policy.

We recognize that it takes time to work these things out, but I think that—as Mr. Severens points out—that this matter could have been moved along faster, and all of the problems have not yet been solved.

I would like to ask, Chairman Boren, that a very short statement that I have be incorporated in the record as if delivered to save the time of the members of the committee.

Senator BOREN. So ordered.

[The prepared statement of Senator Exon and the prepared statement and attachments of Mr. Severens follow:]

PREPARED STATEMENT OF HON. J. JAMES EXON, A U.S. SENATOR FROM NEBRASKA

Chairman Boren and members of the subcommittee, I appreciate the opportunity to join you today for this oversight hearing. Before I make a few brief comments on the FmHA/Farm Credit System Demonstration Program, I would like to submit for the hearing record the testimony of Mr. Eugene Severens of the Center for Rural Affairs in Walthill, Nebraska.

As you well know, establishing the demonstration program in Nebraska has been an uphill battle. Last summer Omaha Bank officials frustrated the process by refusing to seek certification for assistance, one of the first steps on the road to establishing the program. I objected vigorously because it was clear to me that Omaha Bank officials were not following the law and because I wanted Nebraska farmers to receive all the benefits and protection to which they are entitled under the 1987 act. Fortunately, Omaha officials finally agreed to seek certification.

The next hurdle was erected by the Reagan Administration which delayed the finalization of the regulations needed to implement the demonstration program. I was pleased that hurdle was cleared when the FmHA released the final regulations on January 13th.

Unfortunately, our problems have not gone away entirely. The FmHA's treatment of certain provisions is far from perfect. The provision requiring that land be set aside for sale under the program is a prime example. FmHA has largely forgiven the system of this obligation by permitting them to "pull the rug out from under a farmer" while he is working his way through the application process.

The second flaw relates to the requirement that certified banks subdivide large parcels of land so it can be sold to FmHA eligible borrowers. The FmHA regulations effectively ignore this mandate at the expense of family farmers seeking a new start.

Congressional intent was clear in each of these areas. In simple terms, Congress wanted the family-size farmer to get a helping hand in exchange for bailing out the Farm Credit System. I still believe that approach makes sense and would appreciate an explanation from FmHA officials of their thinking in this area.

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Testimony of
Eugene Severens
Center for Rural Affairs
Walthill, Nebraska

before the
U. S. Senate Agriculture Subcommittee on Credit
Washington, DC
January 24, 1989

Mr. Chairman, thank you for this opportunity to provide testimony on FmHA's compliance with terms of the Agricultural Credit Act 1987. The Center has testified before this subcommittee on a number of occasions both before and after passage of this historic law. Our organization has been particularly concerned about assuring that "inventory" property owned by both FmHA and certified FCS institutions is targeted to family-size farm operations. Today, I'm here to report some good news and, unfortunately, some bad news about these inventory sales.

FmHA INVENTORY SALES

First, the good news. I am happy to report that, as to the sale of FmHA's own inventory farmland, FmHA's final regulations (effective October 14, 1988) are significantly improved from last summer's proposed regulations. FmHA inventory property is now beginning to be publicly sold for the first time since the 1987 Act, and we are hopeful that pre-1987 abuses will not reoccur. Discussions we have had with state officials in a number of states suggest that the new 1987 amendments will be observed and that family-size farm operations will, in fact, get the first opportunity to buy this land after previous owners.

The sale of this farmland is no small event. We estimate that about 8000 farm and ranch parcels will pass through FmHA's inventory over the next four years. These sales will be the biggest redistribution of federal farmland since the Homestead Act, and can have a significant impact on family farm tenure patterns. In states with considerable FmHA inventory farmland (see Appendix 1), we are talking about 3-5 farms per county.

In order to make sure that beginning, re-entry and other family-size farm operations are aware of these opportunities, our organization has prepared a "Guide to the Purchase of FmHA Inventory Farmland" which describes the procedures for applying to purchase this land. The guide also includes lists of all FmHA farmland property for selected states. These lists, which were secured through Freedom of Information Act requests, include, among other other things, number and type of acres and recent appraised value.

I'd like to take this opportunity to thank the Senate Agriculture Committee for considering these FmHA inventory reforms in the fall of 1987. I'd especially like to thank Senators Leahy and Lugar for their efforts to secure passage of the reforms on the floor of the Senate.

'FCS-FMHA DEMONSTRATION PROJECT

Now, the bad news. As we reported to this subcommittee in testimony for hearings held on September 30, 1988, not a single piece of property has been sold through the demonstration project. This is still the case. As a joint FCS-FmHA project, the SEC. 613 demonstration project is vulnerable to maladministration from both sides. Unfortunately, this is exactly what's happening as the two institutions take turns hiding behind one another.

As this subcommittee well knows, implementation of the demonstration project was first held hostage in the four-state Omaha District (IA, NE, SD, WY) by the refusal of the Omaha FCB to apply for certification. This subcommittee's hearing on June 16, 1988, was instrumental in forcing the Omaha Bank to apply for certification.

The next major obstacle was the failure of FmHA to adopt regulations for its side of the project. On Friday, January 13, the long-awaited regulations were published, and they are a disaster. Not only does FmHA issue regulations that are confusing and internally contradictory for its own part, it then presumptuously forgives FCA and certified institutions from performing their own mandated congressional responsibilities.

The most serious case in point is FmHA's gratuitous forgiveness of FCA and certified institution's performance of this key statutory language from the 1987 Act (Sec. 613 adding new subsection 351(h)(8) to CONACT):

> "(8) In carrying out this subsection, Farm Credit System institutions shall--
> . . .
>
> "(B) to the extent practicable, set aside . . . land acquired or owned by such institutions . . . for purchase by eligible borrowers in accordance with [the demonstration project]. . ." (my emphasis)

In the January 13th regulations (54 Fed. Reg. 1596), FmHA includes Attachment 1 ("Farm Credit Bank Agreement") which is a fill-in-the-blank agreement between FmHA and a certified bank. Here, FmHA includes a clause (V) in which certified Farm Credit Banks are allowed to

> "reserve the right to market and sell its acquired property to any qualified individual until . . . [FmHA and the borrower have completed all demonstration project procedures] . . ."

A certified FCB's obligation "to the extent practicable, set aside" land for purchase by demonstration project buyers means nothing if those banks can simply continue marketing the property and sell it to someone else while the demonstration project applicant struggles through 60 days

(minimum) worth of procedures. The net effect of this clause V is to completely undo the "set aside" language from the Section 613 of the 1987 Act.

As with FmHA's own inventory the stakes are considerable. Two district banks (Omaha or St. Paul) are the certified banks with the most property -- about 455,000 acres. Here's our latest state-by-state breakdown of their inventories (Octcber 1988):

Omaha district		St. Paul district	
Iowa	35,000 acres	Michigan	20,000
Nebraska	59,000	Wisconsin	92,000
So. Dakota	27,000	Minnesota	79,000
Wyoming	36,000	No. Dakota	107,000
	157,000		298,000

By the terms of the 1987 Act, FCS institutions are to "set aside" this land "to the extent practicable" for sale under the terms of the demonstration project. We have never heard any FCS argument why the bulk of this land can't be sold through the demonstration project. The new FmHA regulations' Attachment 1 (which had not appeared in the proposed regulations of June 17,1988; 53 Fed. Reg. 22764) now pretends to excuse these district banks of any meaningful implementation.

The very same scenario is played out with respect to Secton 613's language mandating that certified banks subdivide large parcels where their value exceeds the maximum amount ($300,000) of an FmHA guaranteed FO loan. Since FmHA guaranteed FO loans are the financing vehicle for demonstration project sales, it was only natural that Congress mandated [at 351(h)(8)(C)] subdivision of parcels above that amount. However, in Attachment 1, paragraph II, FmHA again gratuitously presumes to have the authority to pardon FCS institutions from this obligation. It turns the statutory "shall" into a "may" and adds a whole new purpose for the subdivision. The net effect allows the FCB to subdivide whenever it chooses instead of when the statute calls for subdivision.

CONCLUSION

The Omaha and St. Paul banks have each happily received over $100,000,000 in bailout assistance. Yet they have done everything they can to dodge the responsibilities which Congress attached to that assistance. By Attachment 1 of the FmHA regulations, FmHA is, for whatever reason, now an accomplice in allowing this evasion to take place.

RECOMMENDATIONS

We recommend that Attachment 1 be completely revised so as to remove the pretenses of any FmHA authority to excuse FCA and FCS institutions from implementing mandated procedures to "set aside" "to the extent possible" land for sale through the demonstration project and to subdivide property which is in excess of the FmHA guaranteed FO loan maximum ($300,000).

We further recommend that FCA immediately develop regulations implementing the set-aside and subdivision subsections of the Section 613 so as to avoid confusion in the future and repeated avoidance of this subsection. FCA, through a memorandum of understanding (Appendix 2) signed with FmHA on March 3, 1988, has already agreed that it "will monitor compliance" of FCS institutions of the terms of the demonstration project. We have sent a FOIA request to the FCA to learn what monitoring efforts that have conducted, but have not yet received a reply (Appendix 3).

Thank you for this opportunity to provide testimony. We appreciate the efforts of this subcommittee to monitor compliance with the 1987 Act.

(Appendixes 1, 2, and 3 and the prepared testimony of Annette Higby, Center for Rural Affairs follow:)

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FORM FMHA : 389-875
REPORT CODE : 593-A

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
FINANCE OFFICE

RUN DATE : 12/31/88
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PAGE : 1

NATIONAL SUMMARY
FARMER PROGRAM (CONACT)
PROPERTY IN INVENTORY

			ALL FARMS IN INVENTORY		PROGRAM SUITABLE PROPERTIES:		ACREAGE SUMMARY				
RANK	STATE	TOTAL PROP	NUMBER	CURRENT MARKET VALUE	TOTAL NUMBER FARMS	CURRENT MARKET VALUE	TOTAL	CROP	PASTURE	WOOD	OTHER	AVERAGE MONTHS HELD
33	AL	31	24	1,591,000	20	1,417,000	3604.8	1106.7	1959.7	491.4	47.0	24.7
32	AZ	37	31	10,699,455	14	5,417,320	4437.8	2610.3	34.8	12.0	1780.7	13.8
21	AR	97	80	10,502,265	58	7,385,855	12963.6	6491.3	3803.3	2098.5	570.5	21.2
19	CA	101	87	58,092,733	48	20,696,254	19813.0	7209.4	10479.1	84.8	2039.7	34.1
13	CO	167	158	30,254,230	121	23,861,700	56515.6	35164.4	19290.3	273.3	1787.6	35.1
45	CT	2	1	135,000	0	0	.0	.0	.0	.0	.0	0.0
43	DE	3	3	178,000	2	155,000	156.5	116.6	.0	39.9	.0	17.5
22	FL	96	79	16,453,667	59	13,943,887	16276.4	8312.4	2634.9	3848.6	1480.5	38.9
20	GA	100	90	11,208,870	62	7,847,870	17063.4	9002.0	1279.9	6175.6	605.9	22.7
11	ID	178	169	22,729,901	104	13,708,189	24202.8	15407.6	7101.8	277.6	1415.8	28.6
18	IL	102	98	10,186,188	74	8,612,281	10426.8	6839.6	1610.6	1584.1	392.5	29.6
28	IN	55	46	4,692,050	28	3,076,450	4342.0	2904.5	494.5	768.1	174.9	33.6
03	IA	343	337	39,090,231	327	38,436,761	77244.4	44651.8	22615.0	5446.0	4531.6	28.6
04	KS	304	300	29,425,475	222	19,194,328	62162.0	32672.4	23007.1	3535.2	2947.3	31.8
27	KY	56	49	3,699,000	45	3,489,100	6507.9	2742.5	1815.3	1742.9	207.2	14.5
12	LA	175	149	24,330,917	120	20,967,482	41799.8	38196.7	1213.7	1246.2	1143.2	34.6
36	ME	21	20	1,288,525	6	501,500	1551.0	616.0	25.0	867.0	43.0	18.6
41	MD	12	11	1,558,500	6	869,600	528.4	356.0	66.0	73.0	33.4	32.8
44	MA	3	3	2,552,500	2	252,500	209.0	65.0	15.0	119.0	10.0	55.6
09	MI	207	164	16,180,776	138	14,181,976	23492.0	17214.1	1123.6	4052.7	1101.6	33.5
06	MN	240	238	26,205,578	183	20,735,061	61334.5	39881.8	8163.7	8591.2	4697.8	33.3
02	MS	390	325	54,037,100	214	27,461,469	59744.4	30534.8	15298.0	12434.8	1476.8	30.8
01	MO	430	414	35,000,626	400	33,448,959	101328.1	42474.0	36414.9	18929.2	3510.0	6.8
29	MT	46	43	7,317,100	29	5,466,200	17094.8	4885.8	12006.1	.9	202.0	18.8
14	NE	155	150	20,070,803	143	19,167,661	53747.2	27154.4	24389.5	323.4	1879.9	33.0
40	NV	14	14	3,549,300	9	1,728,800	4798.9	2782.0	523.1	.0	1493.8	22.4
47	NJ	1	1	184,400	1	184,400	131.0	52.0	.0	62.0	17.0	55.1
30	NM	42	40	9,605,015	38	9,467,140	46158.9	16212.3	20090.3	25.3	9831.0	23.2
17	NY	141	136	14,092,500	96	10,207,400	20941.7	11702.3	3789.0	4673.8	776.6	41.3
15	NC	150	126	17,318,040	87	9,811,313	12801.5	7603.3	409.9	4218.2	570.1	30.0
08	ND	214	211	30,250,207	208	30,110,457	111653.2	73227.6	31341.3	600.1	6484.2	30.6
42	OH	8	8	1,171,900	7	1,119,900	2454.4	2018.6	183.0	161.5	91.3	31.8
10	OK	180	170	27,303,461	131	19,535,362	47257.1	16394.6	24259.0	4989.9	1613.6	33.1
24	OR	81	77	12,276,875	58	10,069,600	15918.8	7857.8	6519.5	361.4	1180.1	30.4
31	PA	40	31	3,276,000	18	1,924,800	3141.7	1154.9	737.2	1200.5	49.1	26.3
35	PR	27	22	3,021,700	19	2,822,000	4295.1	3232.9	509.0	287.0	266.2	50.2
26	SC	59	43	4,836,600	37	4,552,200	9664.9	5276.1	424.7	3602.4	361.7	29.1

APPENDIX 1

PROGRAM : KNBR05
FORM FMHA : 389-875
REPORT CODE : 593-A

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
FINANCE OFFICE

RUN DATE : 12/31/88
AS OF DATE : 12/30/88
PAGE : 3

NATIONAL SUMMARY
FARMER PROGRAM (CONACT)
PROPERTY IN INVENTORY

			ALL FARMS IN INVENTORY		PROGRAM SUITABLE PROPERTIES:		ACREAGE SUMMARY					
RANK	STATE	TOTAL PROP	NUMBER	CURRENT MARKET VALUE	TOTAL NUMBER FARMS	CURRENT MARKET VALUE	TOTAL	CROP	PASTURE	WOOD	OTHER	AVERAGE MONTHS HELD
05	SD	256	252	27,629,958	250	27,223,958	184298.4	80302.4	99056.7	1338.1	3601.2	28.6
16	TN	149	135	11,064,915	111	9,747,126	22197.0	8682.4	3295.3	9548.5	670.8	31.5
25	TX	65	64	10,394,499	50	6,836,584	17476.1	13609.5	3364.4	230.7	271.5	38.1
38	UT	17	14	1,602,300	12	1,510,300	2466.1	1941.7	279.0	.0	245.4	18.3
46	VT	2	1	55,510	1	55,510	12.6	4.9	3.5	3.7	.5	22.6
39	VA	17	15	1,397,900	11	1,199,900	1773.0	481.0	538.9	654.5	98.6	28.8
23	WA	82	81	14,060,845	64	11,746,395	14943.8	7935.5	4178.6	674.9	2154.8	17.6
37	WV	19	15	1,750,300	13	1,670,800	1980.9	721.0	917.9	294.0	48.0	21.4
07	WI	218	213	21,150,975	205	20,805,400	45405.8	27079.0	7188.0	8867.8	2271.0	44.0
34	WY	30	28	5,188,700	26	4,701,000	36845.1	7549.0	28954.0	2.0	340.1	31.0
NATIONAL TTL		5163	4766	658,662,390	3877	497,324,748	1283162.2	672430.9	431404.1	114811.7	64515.5	28.8

APPENDIX 2

MEMORANDUM OF UNDERSTANDING BETWEEN
THE FARM CREDIT ADMINISTRATION AND THE FARMERS
HOME ADMINISTRATION REGARDING THE DEMONSTRATION PROJECT
FOR THE PURCHASE OF FARM CREDIT SYSTEM LAND

Section 613(c) of Public Law 100-233, the Agricultural Credit Act of 1987 (1987 Act), amends Section 351 of the Consolidated Farm and Rural Development Act, 7 U.S.C. §1999, by adding Subsection (h) which provides for the establishment of a Farmers Home Administration (FmHA) 3-year Demonstration Project (Demonstration Project). The Demonstration Project provides FmHA guarantees and interest rate reductions on loans to eligible applicants for the purchase of land owned by Farm Credit System (System) institutions certified by the Farm Credit System Assistance Board to receive assistance.

In addition, Section 613(c) of the 1987 Act requires the Secretary of Agriculture (Agriculture) and the Farm Credit Administration (FCA) to develop a joint Memorandum of Understanding governing the implementation of the Demonstration Project. Therefore, the following constitutes the agreement between Agriculture and the FCA relative to the Demonstration Project.

1. The FmHA will determine eligiblity of applicants for the Demonstration Project and will provide, to the extent practical, financing from funds available for guaranteed farm ownership loans.

2. The FmHA will monitor the Demonstration Project and prepare monthly reports as to the loan activity generated by the Demonstration Project.

3. The FCA through its regulatory, examination and supervisory powers, will monitor compliance with the provisions of the 1987 Act relating to the Demonstration Project that are applicable to System institutions. Such provisions require certain System institutions: to sell land to eligible borrowers under the Demonstration Project at fair market value; to the extent practicable, to set aside each fiscal year land in an aggregate amount not to exceed $250 million for purchase by eligible borrowers; and, if necessary, to subdivide tracts of land into parcels permitting borrowers to purchase land within the restrictions placed on loan size by law.

4. The FCA, upon request of FmHA, will provide technical assistance to the extent possible in connection with the implementation of the Demonstration Project.

5. The FCA will notify the FmHA, to the extent FCA has been so advised, of System institutions certified to issue preferred stock under Section 6.4 of the Farm Credit Act of 1971, as amended.

6. The FCA and FmHA understand the following regarding the Demonstration Project established by the 1987 Act:

   - o Loan guarantee applications will be processed in accordance with FmHA regulations, including those set out in 7 C.F.R. Part 1980 Subparts A and B.

   - o Properties listed under the Demonstration Project will be disposed of in a manner consistent with the applicable provisions of Section 4.36 of the Farm Credit Act of 1971, as amended by Section 108 of the 1987 Act, governing the rights of first refusal of former owners.

This Memorandum of Understanding is effective upon signing by both the Chairman of the FCA Board and the Administrator of the Farmers Home Administration and may be amended at any time by agreement of both parties, and shall terminate with the expiration of the authority for the Demonstration Project.

By: Vance L. Clark, Administrator
Farmers Home Administration

Date 3.3.88

By: Frank W. Naylor, Jr., Chairman
Farm Credit Administration

Date 3-3-88

APPENDIX 3

CENTER FOR RU[illegible]
Post Office Box 405
Phone (402)846-5428
Walthill, Nebraska 6806
Population 90

January 3, 1989

FOIA Request

Ronald H. Erickson
Freedom of Information Officer
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Dear Mr. Erickson:

Section 613(c) of the Agricultural Credit Act of 1987 amends Section 351 of the Consolidated Farm and Rural Development Act (7 USC 1999) by adding subsection (h) which creates the "demonstration project for purchase of system land." New subsection 351 (h)(8) states in part:

"(8) In carrying out this subsection, Farm Credit System institutions shall--

. . .

"(B) to the extent practicable, set aside each fiscal year land acquired or owned by such institutions of the Farm Credit System in an aggregate amount not to exceed $250,000,000 at fair market value, for purchase by eligible borrowers in accordance with this subsection. . ."

The "Memorandum of understanding between the Farm Credit Administration and the Farmers Home Administration" (effective March 3, 1988) [required by subsection 351 (h)(9), copy attached] states in part:

"3. The FCA through its regulatory, examination and supervisory powers, will monitor compliance with the provisions of the 1987 Act relating to the Demonstration Project that are applicable to System institutions. Such provisions require certain System institutions: . . . to the extent practicable, to set aside each fiscal year land in an aggregate amount not to exceed $250 million for purchase by eligible borrowers. . ." (our emphasis)

We request, under the Freedom of Information Act (FOIA), the following information:

1. A copy of any documents (if any) that amend this "Memorandum of understanding."

2. The names of any FCS institutions (or receiverships) currently eligible to participate in the demonstration project.

3. The effective dates of each institution's eligibility to participate in the demonstration project and a description of the nature of such institutions' duties and responsibilities in the sale of aquired farmland after such effective date.

4. The results, so far, revealed by your monitoring of each eligible institution's compliance with demonstration project laws and procedures as FCA has agreed under item No. 3 of the Memorandum (above quoted).

5. Any documents (regulations, implementation guidelines, memorandum, etc., including communications sent to or received from institutions eligible to participate in the demonstration project) relating to implementation of the demonstration project.

6. In specific, any documents relating to the implementation or interpretation of the provision that: ". . . Farm Credit System institutions shall . . . to the extent practicable, set aside" acquired inventory farmland for purchase by borrowers through the demonstration project.

7. In specific, any documents relating to whether the applicability of the demonstration project to particular inventory property depends on whether the property was acquired by an PCA/FICB or FLBA/FLB where "certification" (under Section 6.4) took place after the district-level merger of the FICB and FLB.

We are requesting this information in order to analyze the potential of the Section 613(c) demonstration project. This project is an important public program, and in the public interest, we will provide the results of our analysis to any interested parties. Accordingly, we ask that you waive any fees connected with this request. Thank you for your attention to this request, and we hope to hear from you within the 10 working day limit of the FOIA.

Sincerely yours,

Eugene Severens

cc: U. S. Senate Agriculture Committee
U. S. House Agriculture Committee

95-465 0 - 89 - 3

CENTER FOR RURAL AFFAIRS
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Walthill, Nebraska 680
Population 9

TESTIMONY OF
ANNETTE HIGBY
CENTER FOR RURAL AFFAIRS
WALTHILL, NEBRASKA

before the
U.S. SENATE AGRICULTURE SUBCOMMITTEE ON CREDIT
WASHINGTON, D.C.
JANUARY 24, 1989

Mr. Chairman, thank you for the opportunity to provide written testimony addressing the tax barriers to the effective operation of the Agricultural Credit Act of 1987. As the committee is well aware, the Agricultural Credit Act offers farmers an orderly means of restructuring federal farm debt when restructuring would result in a greater recovery to the government than foreclosure. The Act represents a wise policy approach to the farm crisis and will be an important tool in the effort to rebuild family farms and rural communities. Yet, if the Act is to work as intended, certain tax impediments must be removed. I would also like to inform the committee of recently introduced tax legislation which if acted on this year, would enhance the effectiveness of the Agricultural Credit Act and ease the tax consequences of farm failure, debt restructuring and bankruptcy for many low income and low equity farm families.

Of primary concern to financially distressed farmers wanting to utilize the new Act are the tax provisions dealing with capital gain and debt forgiveness.

CAPITAL GAIN

The tax code does not distinguish between transfers of property to satisfy debt and other transfers of property for profit. A farmer will have to count as income any gain on the transfer to the extent of the difference between the farmer's tax basis in the property (usually the purchase price) and the asset's fair market value or sale price. This is true even if all of the proceeds or the property itself is turned over to the lender. In instances where a farmer is left with few resources after a sale, a tax liability is inequitable and probably uncollectable. For low income and low equity farm families, an after liquidation tax liability can slow or perhaps preclude altogether their financial recovery.

The gain provisions will directly impact the effectiveness of the FmHA preservation loan servicing programs which include the dwelling retention and lease back and buy back programs. The Agricultural Credit Act of 1987 gives FmHA borrowers who are unable to generate enough income to restructure their farm debt the opportunity to lease or repurchase their home and up to 10 acres. The borrower may also lease back or buy back the rest of the farm. While the terms of the lease or repurchase agreement can be worked out beforehand, the farmer must ultimately voluntarily convey the farm back to FmHA.

An after conveyance tax liability may jeopardize a farm family's ability to repurchase or retain their home. It may also make it more difficult for the farmer to show that he or she can make lease payments on the home or the rest of the farm. A hypothetical example of this problem entitled "The Tax on Farm Failure" is attached.

It is the objective of the FmHA preservation loan servicing programs and other similar provisions in state law to put farm families in a position from which they could start over, by allowing them to retain or repurchase some financial toehold in the community. In too many instances, tax law will stand in the way of this objective. If rural America is to recover from the farm crisis we have to leave these people with more than a tax bill.

DISCHARGE OF INDEBTEDNESS INCOME

The tax code requires that debt which has been forgiven must be counted as income to the debtor. There are, however, a few exceptions to this rule. Debtor's who are insolvent or in bankruptcy can exclude discharge of indebtedness income but they must apply it against their "tax attributes" such as net operating losses, net operating loss carryovers from previous years, and basis in property.

There is also a special provision for solvent farmers, which allows them to exclude discharge of indebtedness income up to the amount which can be applied against their tax attributes. The solvent farmer exclusion is poorly targeted. There are no income and equity limits, hence, the provision's applicability bears little relationship to a taxpayer's capacity to pay.

The provision's sole targeting mechanism is a requirement that the farmer meet a 50% farm income test over the three year period preceding the discharge. This provision unfairly excludes those farmers who were forced to sell machinery, denied crop financing or for any number of reasons were forced to seek off farm employment and scale down their farming operation.

As the committee is well aware, prior to the passage of the Agricultural Credit Act, FmHA was enjoined from initiating foreclosure actions against delinquent borrowers. A permanent injunction was issued by Judge Van Sickle in February of 1984 in the national class action lawsuit, Coleman v. Block. While FmHA's hands were tied, life for the some 80,000 delinquent borrowers went on. Some are no longer farming, or have come to rely primarily on off farm income. Too many with minimal resources will be unable to meet a 50% farm income test and will find that the debt discharged by FmHA will become a debt owed to the Internal Revenue Service.

The solvent farmer exclusion should be limited to low income and low equity farm families who discharge qualified farm indebtedness. A "farmer" test which required that the taxpayer earned at least 50% of his or her gross income from farming and who materially participated in the farming operation at the time the debt was incurred would be more appropriate.

FmHA's ability to recapture some of the debt written off through shared appreciation mortgages also raises tax questions. All FmHA borrowers who receive some form of debt write down must sign a shared appreciation mortgage or SAM. A SAM is a 10 year agreement between the borrower and FmHA which provides that if the real estate securing the rewritten debt is sold or if certain other events occur, including the expiration of the agreement, the farmer must pay FmHA up to 75% of any positive appreciation in the value of the real estate.

The first tax question raised by SAM's is when does the farmer recognize the discharge of indebtedness income? Does the farmer recognize it at the time the agreement is signed or anywhere from 1 to 10 years later when recapture occurs? There is no legislative direction and very little judicial guidance on this question, although preliminary indications from the IRS are that recognition should not occur until the amount of discharge of indebtedness income is certain, in other words, at the time of recapture.

The heart of the problem is that when a farmer signs a shared appreciation mortgage, he or she will not be able to determine 1) the amount of the discharge of indebtedness income to be recognized at some point in the future and 2) whether at the time of recapture they will be eligible for the solvent farmer or some other means of excluding discharge of indebtedness income. The result of this uncertainty is that farmers will be reluctant to sign the agreements and instead will opt for chapter 12 bankruptcy.

Legislative action is needed to clarify the timing issue. In the interests of certainty, farmers should be allowed to recognize the full amount of the write down in the tax year the agreement is signed. If at the time of recognition the farmer applies the discharge of indebtedness income to his or her tax attributes, then at the time of recapture the farmer should be allowed to make certain adjustments. The adjustments should depend on whatever event triggered the recapture. If the triggering event is the sale of the real estate, the farmer should be allowed to add the recapture amount to his basis. If the triggering event is the expiration of the agreement or repayment of the loan the farmer should be allowed to take a deduction from current income equal to the amount recaptured.

SENATE BILL 2873

On October 7, 1988, Senator Conrad of North Dakota and Senator Daschle of South Dakota introduced Senate Bill 2873, which if reintroduced and passed this year would ease the tax consequences of farm failure, debt restructuring and bankruptcy for many low income and low equity farm families. An identical bill, HR 5564 was introduced by Congressman Dorgan of North Dakota on October 22, 1988.

The bill addresses the tax problems associated with gain realized from a transfer of property to satisfy debt and the recognition of income when debt is discharged. It allows farm families who meet certain income and equity limits to exclude from their income up to $350,000 in capital gain and discharge of indebtedness income. Farmers who meet the test will still, to the extent possible, have to apply the excluded amount to their tax attributes. The remainder will be forgiven.

This bill which limits its relief to those without the capacity to pay is a responsible approach to the tax consequences of farm failure and debt restructuring. Like the Agricultural Credit Act of 1987, S 2873 balances public costs and budget constraints against the public obligation to respond to the farm crisis. S 2873 does nothing more than put farm families in a position from which they can rebuild. I urge the subcommittee to extend congratulations to Senator Conrad and Senator Daschle for their leadership and to express its support for this legislation to other members of the Finance Committee.

(Attachment follows:)

CENTER FOR RURAL AFFAIRS
Post Office Box 405
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Walthill, Nebraska 68067
Population 900

THE TAX ON FARM FAILURE

For several years now it has been the job of family farm advocates and attorneys working with financially distressed farm families to find some way to put their clients in a financial position from which they could start over, rebuild their lives and keep some toe hold in the community - on or off the farm. In many instances tax law has stood in our way, denying our clients a fresh start and making the economic recovery of our rural communities all the more difficult.

Consider the Hansens - a fictitious but all too typical farm couple in their late 50's. The Hansens started farming in the mid-1950's. The Hansens had a few bad years in the early 1980's and unpaid operating debt was rolled over as debt against their real estate. Today, the debt against their farm assets exceeds their fair market value. The bulk of their debt is held by the Farmers Home Administration. They have been delinquent in their payments with FmHA for several years but for many reasons (primarily litigation against the agency) FmHA has been unable to foreclose on their farming operation. The Hansens at least have time to take stock of their options. What are their options?

The Hansen's cash flow reveals that a chapter 12 reorganization isn't possible. The Hansen's just can't generate enough income on or off the farm to pay their secured creditors the value of their farm assets as they would have to under a chapter 12 plan. Their age is a significant factor. It makes it more difficult for them to find an off farm job, as most chapter 12 debtors must, to meet the repayment obligations of the the restructured operation. And the 40 year payback period necessary to show repayment just isn't realistic given their age. Besides, the Hansens have been renting the farm to their son, who wants to take over the farm. The rental income he pays them is not considered farm income so they don't meet the chapter 12 eligibility requirement that 50% of their income is from farming.

One possibility is to simply turn over their assets to FmHA - this is called a voluntary conveyance. The Hansens could then apply to FmHA for dwelling retention which is the right to lease back their home and a few acres with an option to purchase. Their son would also have the opportunity to apply for lease back with an option to purchase the rest of the farm. These are programs that farm advocates fought hard for and won in the Agricultural Credit Act of 1987. But what are the tax consequences of this plan?

Tax law does not distinguish between land sold under stress or a turnover of assets to satisfy debt and other transfers of property for profit. The farmer must count as taxable income any "gain" on the transfer. The gain will be the difference between the farmer's tax basis in the property (usually the purchase price or zero if produced on the farm) and the assets fair market value or sale price. This is so even if all of the sale proceeds or the property itself is turned over to the lender.

The Hansens purchased their 140 acres in 1955 for $300 an acre, so their tax basis is $42,000. Today their land is worth $750 an acre or $105,000 for a total "gain" on the voluntary conveyance of $63,000. The Hansen's will have to report this amount as income.

Farmers and other taxpayers can no longer claim a 60% exclusion for

long term capital gains. All income is now subject to the same rate of taxation. Farmers are also no longer able to use income averaging to balance out the good years against the bad, which could be used to offset tax liability from the transfer of their assets.

The Hansens will have next to nothing after the voluntary conveyance. They will ask their children to help them buy back their home, but an after conveyance tax bill will jeopardize their ability to hang on to it. They simply don't have the capacity to pay the tax liability. A voluntary conveyance then is not a suitable option for the Hansens.

These tax rules will hurt most those farmers who are older, who bought their farms many years ago and who did not participate in the farm expansions of the 1970's. Farmers who bought land at the peak of land values will show losses - not gains - because their tax basis is higher than the property's fair market value.

Sometimes debtors can avoid the tax consequences of selling off farm assets to pay debt by filing a chapter 7 (complete liquidation) bankruptcy. The 1980 Bankruptcy Tax Act provides that a chapter 7 bankruptcy estate is a separate taxpayer and any tax bill that results from the sale of assets is to be paid from property of the estate and not by the farmer personally. If there aren't enough estate assets to pay the tax, the liability is forgiven.

If the Hansens filed a chapter 7 it would have the added benefit of discharging their unsecured debt, such as old medical and farm supply debt that they are unable to pay. They would also be able to retain a small amount of personal property which the law allows them to "exempt" and exclude from the sale of property to pay off their creditors. Conceivably they would be given a fresh start.

But the Hansens may not be able to avoid a tax bill even if they do file a chapter 7. Because the FmHA debt against their property exceeds its fair market value a bankruptcy sale wouldn't generate any extra proceeds to distribute to unsecured creditors, or to pay the costs of sale or fees to the trustee who arranges the sale for the court. In these cases the property has no value to the estate so the trustee frequently will just "abandon" the property to the creditor. The creditor can then use state court or other procedures to force the sale or turnover of the property. The creditor's recovery will be limited to the property itself, and any debt which remains will be forgiven.

The tax consequences of abandonment will be a real problem for the Hansens. For tax purposes, when property is "abandoned" it is treated as if the property had never been in the bankruptcy. The bankruptcy estate, as a separate taxpayer, will not be responsible for any tax bill that results from the sale or turnover of the property. It is the farmer and not the bankruptcy estate which will be liable for the tax consequences of the sale. So the Hansen's would still end up with an after liquidation tax bill in a chapter 7, despite the fact that it is the stated goal of our bankruptcy laws to provide debtors with a fresh start.

The Hansens then, don't really have many options. How many farmers are in this position? We can only speculate. In 1982, the average age of farm operators was 50.5. In 1987, 78% of FmHA's delinquent borrowers had been delinquent for more than 3 years with (according to the agency) little chance for recovery. In addition, FmHA estimates that some 65,000 of its delinquent borrowers will <u>not</u> be eligible for the debt write down provisions of the Agricultural Credit Act of 1987 which directed FmHA and the Farm Credit System to write off debt and keep farmers on the farm when it would be cheaper for the government than foreclosure. These borrowers will have

few options other than bankruptcy or liquidation.

It is difficult enough to accept that many will have to leave agriculture. To tax their exit, deny them a fresh start and a chance to rebuild their lives should be unacceptable. We can't afford to create a whole new class of rural poor which will ultimately put greater burdens on rural communities already hard pressed to provide some kind of a economic safety net in the form of welfare.

Senator EXON. And I thank you for your usual consideration. God speed.

Senator BOREN. Thank you very much, Senator Exon. We appreciate your comments and we will put your full statement into the record. Thank you for joining us. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Johnson, as I understand it, when certain borrowers did not, for whatever reason, sign a certificate or certified letter, a response indicating they received the letter, that Farmers Home Administration then sent by regular mail another notice as to those. Is that correct?

Mr. JOHNSON. That is correct.

Senator BAUCUS. About how long did you wait before sending out that second mailing by regular mail?

Mr. JOHNSON. Well, we let them conclude the first 45-day period, okay?, so we wanted that to expire to see if we were going to receive it within the 45 days.

And so it was just this past week, within the past week, that we sent the letter out to our people directing them to now send it by regular mail, and start the 45-day clock again on those people.

Senator BAUCUS. Now is that in the statute? I mean, does the statute say that if, for whatever reason, the Farmers Home Administration sends notice out during the 45-day period, and the Farmers Home Administration believes, for whatever reason, that people were not given adequate notice or whatever, that it can again take subsequent action to begin another 45-day period?

Mr. JOHNSON. No, sir. I certainly do not think that is in the statute, specifically spelling that out, but we think that that is consistent with the spirit and the intent of what Congress was trying to do, and us going that extra mile to the fullest extent that we can.

Senator BAUCUS. So Farmers Home then feels it has the authority, then, to go that extra mile to accommodate those borrowers who may not have received——

Mr. JOHNSON. Yes, and if we do not do it—I think we recognize we would be right in litigation and we would have everybody on our back for not giving those people that did not receive it an opportunity to, and at least by going this second——

Senator BAUCUS. But Farmers Home does have, in your view, the authority, then, to make that—I do not want to put words in your mouth—but adjustment or change, or whatever, to——

Mr. JOHNSON. Yes, obviously I would have thought so or I would not have signed the communication. That is the truth.

Senator BAUCUS. Well, what I am leading up to, obviously, is what other accommodations might Farmers Home Administration have legal authority to undertake?

You apparently believe that you do not have the authority for another 45-day blanket extension, but apparently you believe that you do have authority to make some kinds of accommodations, or changes, or exemptions, regardless of what the word might be.

I guess I am leading up to a specific case. There is a Montana borrower, who, during the 45-day period, visited the county supervisor over 10 times. He was trying to work things out, and, as it turned out, due—at least in his judgment—to a misunderstanding,

he got all the papers in, including the four forms you indicated, and more, 1 day late.

It just seems to me, that if the Administration believes it has the authority to make some adjustments, to help make sure that people who comply in good faith are able to comply in good faith, that in this case the Farmers Home Administration should also exercise that same judgment, and allow this individual who is exercising good faith, and to at least go through the hoops in the process to see whether or not, you know, the Farmers Home can accommodate him.

That is not to say that the Farmers Home Administration should necessarily do what he wants to do, but that is to say at least he should be given a chance because he did visit the office personally 10 times during the period, and also got all the papers in, but was 1 day late.

Don't you think that he should be given a chance to try to have Farmers Home process his papers? As of this date the Farmers Home Administration is saying no, cut him off completely.

Mr. JOHNSON. Sir, I received a letter from you this morning in my office on this particular case, and we will look into it.

Again, we want our people to use some good common sense, and certainly, to give the benefit of the doubt, as they apply this rule of reason to the farmers out there.

Again, this is not the end of the line with us, with these individuals. We need to develop a communication, rapport with those people.

Now there have been, unfortunately, some few farmers, for the past several years, that have chosen not to communicate with us. They simply do not want to communicate with us because they were still in hopes that something was going to happen some day, and they were just going to be forgiven of all their indebtedness and everything.

But we have a responsibility to continue to try to work with them, and we think that we have taken some reasonable, prudent actions in giving people adequate time and in applying this rule of reason as compared to that requiring all those forms to be——

Senator BAUCUS. We hear you, and obviously there are going to be some borrowers who, for whatever reasons, just do not want to comply.

Mr. JOHNSON. And we want to know about them and we want to work through them.

Senator BAUCUS. That is right. But I think we are asking that you have not a one-way rule of reason but a two-way rule of reason.

I mean, you have a rule of reason which is a tightener. That is, the forms, for example, the FE4 forms, and so forth. That is how you define a rule of reason to tighten up the process.

Mr. JOHNSON. But that considerably loosens up what was originally said because——

Senator BAUCUS. Well, compared with how the statute reads when a written notice is all that is required by the statute. So I am suggesting that you also have a rule of reason which is a loosener. That is, a rule of reason that applies certainly to the circumstances I described.

It seems to me a rule of reason would lead one to conclude that if a borrower has been in 10 times and he happens to be 1 day late, you ought to be able to give him a chance. Thank you.

Senator BOREN. Thanks very much, Senator Baucus.

We will leave the record open for additional questions in writing, and responses from other members of the committee who are not here, and other members who are present that may have other questions later.

Let me ask, if you would, supply for the committee the number of farmers who did reply in writing within the 45 days, but who were deemed not to have completed the rest of the paperwork within 45 days. So that you at least had some communication from them, even though they were not deemed to have completed the paperwork.

[The material follows:]

Following is a listing by category of the number of completed applications returned by delinquent Farmer Program borrowers. The number of bankrupt and previously accelerated borrowers who returned complete applications has been estimated. This estimate was calculated by multiplying the number of borrowers who returned applications by 88.4 percent—the national percentage of all other delinquent borrowers returning complete applications.

Category of delinquent borrower	Number of borrowers			
	Sent notices	Returned application	Returned completed application	Returned application not complete
Previously accelerated	8,890	4,289	3,791	498
Bankruptcy	7,085	754	667	87
Collection only	8,345	1,980	(1)	
All other delinquencies	46,427	27,696	24,495	3,201
U.S. total	70,747	34,719	28,953	3,786
Percentage of applications returned			83.4	10.9

[1] These accounts have no security remaining, a requirement for preparation of a plan of operation.

Senator BOREN. And let me urge you, again, to go back to a consideration of some sort of a safety net under what you have called the rule of reason, and give farmers who did make such a reply within the 45 days, even if they did not complete all the forms, at least perhaps an additional minimum period of time to do so, so that we make sure that—you know—in discretion, there may be people that you will work with another 30 days before they complete their forms, if there is some reason why they are not completed and the local people are trying to do it, work with them.

But I think there should be another minimum period of time, whether that is 15 days, or whatever it is, that those who at least did comply with the requirement of the law, that in writing, they certified they wanted consideration within 45 days, be given it.

I will mention a couple of other concerns. One, that we hope that the personnel—and I applaud you for sending people from headquarters out to try to enhance the field staff so that you can get this 60-day turnaround completed.

As Senator Daschle said, it is very important we not have a double standard, that we put unbearable burdens on the farmers to complete information but then not come up with the completion of action on the other side within the period required.

But also, I am concerned that we not just have a sort of a computerized system—using this DALR$ system evaluation during this 60 days. That if we are understaffed, that if we have problems, that we not just simply say, OK, let's just use the computer printout and that is it, make a mechanical decision without considering the reputation of that farmer for hard work. The evaluation.

I think that very often, the supervisors can make business judgments with their discretion about whether or not—even if the computer printout might not show this is someone you should restructure, their own knowledge of this person. There are all sorts of human factors that can enter in.

Maybe a severe illness of the spouse, or one of the children, or something else, but yet, the knowledge that this person is a good manager, has a good reputation for working hard, not overextending themselves, and so on—there are other human factors that need to be weighed by the supervisors, and by those evaluating the loans, other than just what might appear from a standardized computerized program approach.

We all know that it is impossible to design a program that fits every individual case. So I would hope that you would have as one of your goals making sure that everyone just does not say, all right, to meet our 60 days, we can—certainly you could meet the 60 days if all you did was some very mechanical, brief, computerized approach.

But that is certainly not what we intended. I think that is not what you intend, and I would just urge you to keep that foremost with everyone who is working on this.

And making available the computer printout also, the DALR$ information. I do not think that ought to be discretionary. Is it your intention to make it——

Mr. JOHNSON. It is required. We do give it.

Senator BOREN. You are required. Making it available to everyone, and so if there are farmers that are not getting the DALR$ computer printout information, that is something that they should contact us, contact you, and we will bring it to your attention because we have been getting some reports that, yes, in some places they are being given this information but in other places they are not always being given it.

So I assume that is something you would want to know about.

Mr. JOHNSON. We do require that that be provided.

Senator BOREN. That that be provided. So if any place they are not providing it, that is something you would want to know.

Mr. JOHNSON. With our analysis.

Senator BOREN. Right. That is something you would want to know, if they are not getting that at some locations.

Mr. JOHNSON. Absolutely.

Senator BOREN. Well, again, let me just urge those two points and we would appreciate it if we could have a report on the number that did file a written request, that for some reason were

deemed not to have fully completed the forms within the 45 days, even though they did send the written requests.

And undoubtedly there will be some additional written questions for you.

Mr. JOHNSON. Thank you very much.

Senator BOREN. Thank you very much for appearing today, Mr. Johnson, and your associates.

I think because of time, what we will do is ask that all of our next five witnesses come up together, if they would, including Mr. Beatty, and we will lead off with Mr. Beatty, the Director of the Farmer Assistance Programs, Texas Department of Agriculture; Lee Swenson, National Farmers Union; Benny Bunting, National Save the Family Farm Coalition; Don Schieber and Mr. Ron Voth, who are farmers experiencing the System themselves.

If all five of you would come up and sit along this side. I believe, Mr. Swenson, you have someone accompanying you. He might want to sit at the end, where the person accompanying you can sit by you, and I will ask, if you can summarize your statements, because it is going to be most helpful to have some time, then, to be able to ask questions of you.

If you could hold your statements within the 5-minute timeframe and we will receive your full statements for the record, and summarize for us the high points within the 5-minute period of your testimony. Then we will have some time for questions and conversations back and forth with the members of the committee.

We have just been joined by Senator Harkin of Iowa, who also is an extremely important participator in the writing of this legislation, a very diligent member of the committee who is especially responsible for many of the borrower's rights provisions in the final law, and he has joined us for this part of the session.

We will begin with Mr. Leland Beatty, Director of the Farmer Assistance Programs of the Texas Department of Agriculture, and I understand you have been making some studies of implementation of this act, and we would very much value your insights and any statistical information you can give us.

STATEMENT OF LELAND BEATTY, DIRECTOR, FARMER ASSISTANCE PROGRAMS, TEXAS DEPARTMENT OF AGRICULTURE, AUSTIN, TX

Mr. BEATTY. Thank you, Mr. Chairman. Senators.

I want to start off by commending the State of Oklahoma on the kind of work it has been doing on that. They have been very helpful to us in Texas, they have not been territorial about it at all, and the extension service up there has done a great job.

We have surveyed a scientific sample of the farmers in Texas who received the notes, and we discovered a number of interesting things. First, a substantially higher number of borrowers think that they returned the forms than Farmers Home actually has credited as having returned them.

That is something we are watching over a period of time to see if in fact the people who thought they returned their forms are in fact accepted.

We also discovered, in doing this survey, why people did not return their forms. Basically, out of those folks, 2 percent of them did not think it would do any good. They are just discouraged farmers; 12 percent are no longer in farming; 2 percent read the forms but did not understand them; 5 percent did not have enough time; 6 percent decided to seek bankruptcy instead; 5 percent considered themselves to be already involved in the debt settlement process with Farmers Home; 1 percent said their county supervisor told them not to bother; 1 percent said their lawyer said forget it, and this I think addresses the point of allowing the people who did not take service on the certified letter to have another opportunity here.

There is a growing feeling in the countryside, especially among the legal community, the best approach to Farmers Home is simply to ignore them. That you get a better deal if you do not participate in whatever program is going on right now, because if you do not participate you get a better deal in the long run.

About 4 percent said that they are paid up, they did not know why they got the form, they did not bother to return it, and they are calling their county supervisor to find out. And 1 percent declined to give any reason why they did not.

What we do see is that a substantial number of these folks, with some additional technical assistance, will be able to fill out the form if an extension is granted.

We, in Texas, feel like it is extremely important to get some kind of extension for the borrowers who simply were unable to cope with the complexity of these forms.

The folks at Farmers Home may feel like they were simple forms to complete, but it took a pound and a half of paper mailed to each person to explain them. I think that that alone caused people to believe that they were complex.

Senator BOREN. Did you weigh them?

Mr. BEATTY. We weighed them. They were a pound and a half.

Senator BOREN. You mean the four forms?

Mr. BEATTY. And all the material that went with it to explain how to fill out the forms. The material that explained how to fill them out was much longer than the forms themselves.

Senator BOREN. And those are the actual explanation for these simple forms we heard described a minute ago?

Mr. BEATTY. Yes. It is a pound and a half of paper, and farmers were generally impressed that this was a difficult and complex process.

Senator BOREN. A Thanksgiving gift, a Christmas season gift, with all this to be done at that time, then.

Mr. BEATTY. Additionally, in Texas, we had a number of farmers who were involved in harvesting cotton and in planting Winter wheat during this period, and they found themselves in the fields all day, and trying to cope with these forms at night, and were simply unable to deal with the burden.

There was no advance warning to the support network as to how to go about helping these farmers. The support network actually got ahold of the forms at the same time the farmers did.

So they were trying to get up to speed during the 45 days. By the time we were able to mail out to all the borrowers in Texas, a nice

book prepared by the farmers legal action group, the response period was well over halfway through.

There were lots and lots of problems with the implementation of this notice. I think the only true way to cure it is to give it to people who were trying to comply, additional time to request assistance.

I will not take up any more time. I will submit the prepared statement of Commissioner Hightower for the record.

Senator BOREN. Thank you very much. We appreciate the information you have given us and we will question the entire panel once they have completed their statements.

[The prepared statement of Mr. Hightower follows:]

Remarks of Texas Agriculture Commissioner Jim Hightower Prepared for the Agricultural Credit Subcommittee of the Sentate Agriculture, Nutrition and Forestry Committee presented by Leland Beatty, Director Farmer Assistance Programs Texas Department of Agriculture Washington, D.C. January 24, 1989

Chairman Boren and members of the Subcommittee, I appreciate the opportunity to appear before you today to review the initial execution of the Farmers Home Administration debt restructuring process called for in the Agricultual Credit Act of 1987.

On behalf of the Texas FmHA borrowers who received notices of past due accounts and debt restructuring applications between November 14, 1988 and December 14, 1988, I ask that Congress look closely at taking remedial action in four policy areas that directly affect the effectiveness of the new debt restructuring process.

The first area is funding. Without interim operating credit, no restructuring plan can be successfully completed. Yet, credit would become more difficult to obtain under the budget proposal left behind by the outgoing administration, which called for massive cuts in the FmHA. According to an estimate by the Texas Office of State-Federal Relations, the proposed budget would slash FmHA insured insured loan outlays in Texas by $27.1 million, or 12.3 percent of current funding levels. These cuts would include a $21.5 million, or 69.4 percent, cut in Farm Ownership loan funds and a $5.6 million, or 2.9 percent, cut in Farm Operating loan funds. The proposal would also cut FmHA's Guaranteed Loan program in Texas by $5.6 million.

The second request involves granting an additional 45-day response period to all FmHA borrowers who received notices between November 14, 1988 and December 24, 1988. In December five other state agriculture commissioners and I joined in asking FmHA to extend the initial filing deadline.

FmHA's response was that they had no administrative flexibility to do so, and suggested that it would be up to Congress to authorize such an extension. Accordingly, I request such an extension because the first debt restructuring cycle fell during a holiday period when government offices were closed for as many as 30 days during the first 45-day period, effectively cheating delinquent borrowers of more than two weeks of precious time in which to gather information needed for debt restructuring proposals.

In Texas, this problem was compounded because the restructuring application period fell during the cotton harvest and the winter wheat planting season, a time when few farmers had an adequate opportunity to review the complex packet more than 30 pages of application forms.

The third request is that Congress require FmHA to notify each of these borrowers in writing that they have an additional 45 days in which to prepare their restructuring applications, and to notify them of the dates of the remedial application period. These borrowers deserve a second chance to make the process work, and they need all the advance notice they can get to make the process work. FmHA could also use the additional time to work out the glitches that occurred in the application process.

Finally, I ask that Congress study the tax treatment of debt discharge income and the capital gains treatment of voluntary farm liquidations, since we believe current tax law may place unnecessary barriers to effective utilitization of the debt restructuring process.

We Texans want this debt restructuring process to work. We believe that Congress acted wisely in creating a process that should protect both the government's and the borrowers' interests. By permitting farm borrowers to restructure debt, it is possible to preserve our troubled family farms and to insure the

possibility that the federal government will some day be repaid on the tens of thousands of accounts that have gone past due because of the agricultural recession of the last decade. FmHA's own Regulatory Impact Analysis showed that restructuring could eventually recover $1 billion for the federal government.

We need it to work. Texas lost 29,000 farms and ranches between 1985 and 1988 thanks to the agricultural recession. We have more past-due Farmers Home accounts than any other state, with 6,218 borrowers behind in their payments to the federal lending agency. Of these, 5,001 received debt restructuring packets between November and December of 1988. The other 1,217 had either taken bankruptcy, voluntarily liquidated their operations, or settled small outstanding accounts. The remaining debt is concentrated among full-time, commercial family farmers in our most important farming regions on the Great Plains, the Gulf Coast, and in South Texas. These producers are the very heart of Texas agriculture.

But first round of the debt restructuring process did not work. The Farmers Home Administration state headquarters in Temple estimates that FmHA offices in Texas had received only 1,500 applications for restructuring by Friday, January 20. That is an official response rate of 30 percent.

Our department conducted a telephone survey of 465 Texas FmHA borrowers, 7.5 percent of the total delinquent borrower list, in an attempt to account for the small response. The farmers we interviewed told of a consistent pattern of delay and confusion that resulted in severe underutilization of the new process.

A telephone survey of Texas FmHA borrowers drawn from the list of all 6,218 borrowers with past-due accounts conducted by our Farmer Assistance Program Office indicated that 39 percent of those

who received packets intended to fill them out and return them on time. Another five percent said they would have filled them out if they had more time. A total of 2,736 delinquent Texas borrowers intended to file restructuring plans, or would have done so if they had more time. A total of 1,236 borrowers missed their chance to restructure their debts in Texas. A total of 39 percent did not return forms at all. What went wrong?

Enabling Regulations Were Issued Almost Six Months Late. Fully five percent of those FmHA borrowers we surveyed said they would have turned in debt restructuring applications if they had been given more time. Most said it was difficult for them to spend the time required on the applications while also harvesting fall crops or planting winter crops. Final regulations to implement the debt restructuring provisions of the Agricultural Credit Act of 1987 were issued by FmHA on November 14, 1986. Notices to past-due borrowers followed immediately. The Agricultural Credit Act required FmHA to complete its rulemaking process by early June, six months earlier. FmHA asked Congress for additional time to complete the rulemaking process because of its complexity. Despite the delays in rulemaking, borrowers were given no additional time to study the regulations when they were finally issued, and meditators, attorneys, farm advocates and others who work with farm borrowers were given no additional time to prepare manuals, instruction courses and other support services needed to facilitate the debt restructuring process. Few of these service providers had an adequate opportunity to notify borrowers of the existence of their services.

"I wish I had some help with the forms, it took me 10 days just to fill them out, it took my CPA three days to figure them out." -- North Central Texas farmer.

The application period came during harvest season. The debt restructuring application period of 45 days paralleled the cotton harvest season on the High Plains and South Plains and the corn planting and winter wheat planting season in the Panhandle. The period between November 14 and January 1 is the busiest of the year for many of the farmers in these regions, as they put in 18-to-20 hour days to gather their harvest and plant new crops. The farmers in these regions account for most of the past-due FmHA accounts in Texas. The application period fell during a time when most of the affected produers had no spare time to read the packet much less prepare restructuring plans. This need not have happened if FmHA had kept to Congress' timetable and issued regulations the previous summer.

" It was a real hardship to strip cotton day and night, and then use my sleeping time to fill out forms."
--South Plains cotton farmer.

The application period fell during the stressful holidays. The application period fell between the Thanksgiving and Christmas-New Year holidays. The applications arrived during what many counsellors consider to be the most stressful period of the year, particularly among financially distressed farm families. The arrival of the packets may have had a demoralizing effect on many farm borrowers by arriving during this stressful period.

"FmHA has been very cruel to us in farming. You can't do this to us." -- Panhandle farmer.

The notice and response forms were too complex. A total of 24 percent of survey respondents said they needed help filling out packets and were unaware of technical assistance available through Texas Tech University, while 39 percent said they would have used Tech's Agricultural Debt Mediation Service it if they had known about it. The total packet of information sent to most farmers weighted 1 1/2 pounds and involved the completion of as many as nine forms totalling 30 pages. While FmHA eventually

agreed to accept four completed forms, one, the Farm and Home Plan, took most producers several days to complete. Many farmers said they did not have enough time to read and digest all the information contained in the packet.

"My husband died seven years ago, I'm 77 years old. I don't know what to do with this notice." -- West Texas farmer's widow.

The restructuring applications required financial information that is not generally available at this time of year. For example, the federal government had not yet announced price support levels for the coming year, so it was not

possible for borrowers to accurately reflect expected income form federal payments on their applications. Tax returns are traditionally not complete, nor are year-end accounting procedures for most farms and ranches. Consequently, crucial information needed on the farm and home plan was simply unavailable.

"I won't be able to tell you how much I made until my CPA gets through with my paperwork. I can tell you one thing, it wasn't much." -- Panhandle farmer.

Federal offices that keep required information such as the Agricultural Stabilization and Conservation Service and Soil Conservation Service were closed for the Thanksgiving, Christmas and New Year's holidays during the application period. Office closings interfered with the orderly processing of information requests from farmers applying for debt restructuring. In reality, farmers had only 30 business days in the 45 day period in which to gather information needed for restructuring applications.

"I've got a lazy county supervisor. He's just never around." --Southeast Texas farmer.

Many farmers had not yet received promised disaster payments from the previous summer's drought that could be reflected in restructuring applications. This may have made some farms appear to have a more unfavorable cash flow than was the case in reality.

"I'm in a dispute now over my government payments." -- West Texas farmer.

Borrowers who had other creditors and needed financial information from them in order to complete restructuring applications may have needed more than 45 days to receive replies from those other lenders. Some lenders may require more than 45 days to respond to requests for information from borrowers. Many lending institutions were also closed for several days during the holiday period.

"I've got additional debt for cattle with a private bank. I really need to talk to them."-- Central Texas rancher.

The application period came during the busiest period of the year for CPAs and attorneys, making it difficult to obtain professional assistance. Many of those polled said they were not able to schedule meetings with attorneys or CPAs on a timely basis because those few professionals available in many rural areas were already committed to working on tax and business accounts of current clients.

"I really needed help. I finally found another farmer who helped me fill out the forms. He seemed to know what he was doing."-- South Plains cotton farmer.

While materials to assist farmers in filling out the applications were widely distributed, they did not become available until late in the application process. TDA and Texas Rural Legal Aid mailed all past-due Texas borrowers copies of the specially printed *Farm Survival Handbook*, but the last farmers did not receive their copies until Christmas Eve, little

more than a week before the filing deadline. A videotape of an excellent Oklahoma State University seminar on filling out the restructuring application was made available through our district offices one week earlier, and we did a general public information campaign on the deadline one month earlier. Texas Tech University's Debt Mediation Service had only just gotten off the ground in time to process the first applications, and Texas A&M University had only just inaugurated a new computer model designed to develop cash flow projections for debt restructuring plans.

"I wish someone had told me about the Texas Tech program, I would have used it." -- Panhandle farmer.

Farmers problems do not necessarily end even if they succeed in getting debt restructuring or debt settlement. Current tax law does not recognize any difference in the sale or transfer of property under distress or to settle debt, and property sold or transferred for profit. Transfers to settle debts are subject to capital gains taxes because farmers must count as income the difference between the tax basis in the property and the fair market value or sale price. This is the case, even if all of the proceeds from the sale or transfer are turned over to the lender. For obvious reasons, this is a significant barrier to voluntary liquidation of distressed properties.

"If you sign your property over to FmHA instead of letting them foreclose, there could be a big tax liability."-- West Texas farmer.

Debt discharged by a lender when a debt is settled is considered to be income to the farm borrower, and the amount discharged is subject to federal income tax. Insolvent borrowers have some protection from tax liability, but those who are marginally solvent, including farmers with little cash income and fairly substantial assets. A provision of the 1986 Tax Reform Act designed to extend the insolvency protection

to farmers was considerably restricted by the Corrective Amendments Act of 1988, which limited the amount protected from liability to the amount of remaining tax attributes. For many marginally solvent farmers with fully depreciated assets and no loss carryovers, this offers little protection.

"Income tax is my main problem. I'm very concerned about it."-- West Texas farmer.

Borrowers who were aware of these tax complications may seek bankruptcy rather than the administrative relief provided in the debt restructuring process. A total of six percent of those surveyed said they had already entered bankruptcy proceedings. For the 1,228 delinquent borrowers who did no respond in time, bankruptcy appears to be the likely course of action in the near future.

"I don't care, I'm taking Chapter 7."-- North Central Texas farmer.

I hope that Congress will consider remedial action to improve the debt restructuring application program for those borrowers who had to go through this new, untested process. I also hope that Congress will consider revisions in the process to make it function more smoothly when the next round of notices goes out in July.

Senator BOREN. Mr. Lee Swenson, the president of the National Farmers Union, we are very pleased to have you with us today, and I know you are accompanied by Mr. Dave Velde, the general counsel, and we are pleased to have both of you.

STATEMENT OF LELAND H. SWENSON, PRESIDENT, NATIONAL FARMERS UNION, DENVER, CO, ACCOMPANIED BY DAVE VELDE, GENERAL COUNSEL, NATIONAL FARMERS UNION, ALEXANDRIA, MN

Mr. SWENSON. Thank you, Mr. Chairman. I am Lee Swenson, president of the National Farmers Union. I am pleased to be a part of the ongoing effort to make the Agricultural Credit Act of 1987 fulfill its purposes. Our members are grateful for the commitment that you, Senator Boren, and members of this committee, and Chairman Leahy, have shown to the lenders, borrowers, and taxpayers whose interests are advanced by proper implementation.

Mr. Chairman, I will highlight my written testimony to allow a couple of minutes of my time to Dave Velde, a lawyer from Minnesota, and general counsel of the National Farmers Union, who has worked directly with a number of farmers who have been affected by the program.

Mr. Chairman, we are in the eye of the storm. Much discussion has occurred concerning section 605 of the act which describes the requirements for notifying delinquent FmHA borrowers of the possibility of consideration for loan restructuring.

As has been clearly pointed out, the Farmers Home Administration, not the Congress, decided to require all information that would be pertinent to restructuring applications to be provided within 45 days.

Approximately 30 days into the 45-day period, then-Acting Administrator LaVerne Ausman informed the FmHA regional, State, and county offices that the agency would no longer require certain forms in the packet to be completed within 45 days, and that the rule of reason was to prevail, as has been pointed out. While we commend Mr. Ausman for recognizing the problems facing borrowers scrambling to comply with the 45-day deadline over the holidays, and with many of their legal counsels on vacation, and other bankers on vacation. Borrowers received new notices from the FmHA with new guidelines—I would hasten to add not always the same new guidelines—that led to the rule of confusion, as Senator Daschle pointed out, as much as anything else.

And now it is the Farmers Home Administration that is faced with the statutory deadline of requiring restructuring applications to be processed in 60 days. It is inconceivable to us how agency employees can be expected to meet their deadline and still provide—and this is of concern to us—to provide the kind of interactive, negotiated process that Congress envisioned, and to seek out the least-cost alternative in resolving the debt problem.

You know, the timetable farmers faced, and the timetable now facing the FmHA kind of reminds me of a statement that we heard in agriculture, and that is trying to put 10 gallons of manure in a 5-gallon pail.

Throughout all of this action, a number of farm organizations and religious groups pulled together to put on an all-out campaign to notify the farmers and ranchers that received the notice packet.

We mailed out a brochure first class, not certified mail, to all the borrowers, and so returned to us was those mailings that were undeliverable.

Mr. Chairman, we received back 6,725 envelopes, undeliverable, first class. We believe that most of the people who did not get our brochure also did not get their notice from the Farmers Home Administration, and will not get the new notice, since we used the agency's mailing list.

Mr. Chairman, we are pleased about the clarification as to the access to the DALR$ computer program to use in designing their restructuring applications. Many borrowers have been told that they do not need the DALR$ program since it does not come into play until the application is processed.

But it is like asking someone to shoot at a moving target blindfolded. Information on such things as projected commodity prices, land values, can make or break a cash-flow plan.

Mr. Chairman, if I may, I would like to call on Mr. Velde, our legal counsel, to share brief comments with you concerning a couple of serious concerns for borrowers involved in debt restructuring, such as tax implications of debt write-down, and conservation easements.

Senator BOREN. Thank you very much.

STATEMENT OF DAVE VELDE, GENERAL COUNSEL, NATIONAL FARMERS UNION, ALEXANDRIA, MN

Mr. VELDE. Good morning, Mr. Chairman. During the course of the last 3 to 4 years, I imagine I have represented over 100 farm families as they have tried to renegotiate their farm debt, whether through informal process, or through mediation, or ultimately through bankruptcy.

The result of that process has had mixed results, as is always evident, and I, from that perspective, wanted to reflect on what the agency now faces in its attempt to respond to borrower requests for restructuring.

But that analysis must also be undertaken in the context of what is the goal here, and the goal, as I read it, when reviewing the statute and the legislative history, is that we are to take those steps necessary to ensure the maximum farmer retention while optimizing the recovery to the agency.

And that that is the context for analysis here.

Senator BOREN. Exactly.

Mr. VELDE. The agency reports that there are some 35,000 respondents. At least that is the statistics I had earlier. If we take a look at the workload involved in trying to thoughtfully respond to those requests within the goal, as just stated, that is a lot of work. That is an awful lot of work to get accomplished within a 60-day period of time.

I have sat with people, confronted with the prospect of completing that application process, as submitted and sent out by the agency. During the course of that process you are constantly con-

fronted with an endless stream of questions that cannot be answered on a unilateral one-time basis, that this is what the new farm structure is going to look like. It does not work that way.

The process of debt settlement, by definition, means that the two parties are going to have to meet, negotiate, and each side make some sacrifice, and that is as it should be. But there are two important issues here. First, the creditor's side is made up of more than just the Farmers Home Administration. There are other creditors involved whose interests are going to be affected by what happens. Second, despite the natural debtor/creditor tension that exists, there needs to be an opportunity to identify, review, and hopefully agree to alternatives that can be acceptable not only to the farmer but to all creditors involved on that particular account.

There is a tremendous variety of factors affecting the creditor mix. How secured, unsecured, or undersecured are they? Who is going to yield? To what extent? Under what terms? That process, by definition, involves a significant amount of time.

The framework for this analysis really boils down to three basic points.

One, here is the amount of debt you have; can you service that?

Two, here is the value of your collateral. If the debt were written down to that level, can you service that?

Or finally, here is the amount of money available for debt service once you subtract the direct costs of production for seed, feed, fuel, fertilizer, and the necessities of family living.

The amounts left after that point, are they adequate to service the creditor needs, and the mix of creditor needs that are present?

If we were to assume that this process were to take only 10 hours on each file, we are looking at a situation in which—we are looking at 8,750 weeks' worth of work to get accomplished.

To accomplish that within the 60-day time frame is going to take over a 1,000 people doing nothing but full-time analysis and negotiating on debt restructuring.

I do not think it is realistic. Ultimately, the analysis must also consider, Mr. Chairman, and members of the committee, taxes, because there is an overlay of tax consequence whenever you are looking at realistic bona fide debt settlement. I would like to just identify three.

First of all is the issue of capital gains tax. It is frequently the case that as you approach debt settlement you need to downsize the operation.

You are looking at the liquidation of collateral, whether it be in the form of livestock or equipment or real estate.

That exchange, whether by way of sale to a third party or the return of that collateral to the creditor is a sale, and capital-gains tax consequences can befall that borrower.

Second, we also find some particular aspects as a result of the 1987 Credit Act, particularly the shared appreciation position. That is going to have an affect upon the tax attributes of that particular farmer, but is not fully calculable until the conclusion of the 10-year period because it is not until that point in time that you can determine how much forgiveness is in fact taking place, and thus, what effect does it have on the tax attributes of that farmer.

Finally, conservation easements. Traditionally, easements are a zero-basis asset. The conveyance of those easements to the agency and ultimately to the U.S. Government is also a capital-gains situation, and the tax consequences from these aspects can frequently render an otherwise workable restructuring simply unrealistic.

Thank you, Mr. Chairman.

Senator BOREN. Thank you very much.

Mr. SWENSON. Mr. Chairman, just in closing, let me reiterate the fact that we are truly in the middle of the storm. At the same time we have got to deal with these 1,000 employees working these 8,700 work weeks, we must deal with the normal loan servicing of current or new borrowers.

Senator BOREN. Right.

Mr. SWENSON. And Mr. Chairman, there is a quick need also for implementation of the operating loan refinancing idea in Section 312 of the Disaster Assistance Act of 1988 with the Farmers Home Administration.

It is our hope that the program would be carried out as intended by Congress with the best interests of the borrowers and the taxpayers protected.

Mr. Chairman, may I also request consideration of the committee not only to continue oversight of the Farmers Home Program, but to conduct additional hearings on the Farm Credit System titles of the Act, particularly with regard to the budgetary impact of the financial assistance to system institutions.

Thank you, Mr. Chairman.

[The prepared statements of Mr. Swenson and Mr. Velde follow:]

NATIONAL FARMERS UNION

Testimony of

Leland H. Swenson, President
National Farmers Union

Before the Subcommittee on Agricultural Credit
Committee on Agriculture, Nutrition and Forestry
United States Senate

on

Implementation of the Farmers Home Administration Sections of the Agricultural Credit Act of 1987

January 24, 1989

600 Maryland Avenue, S.W. • Suite 202 • Washington, D.C. 20024 • Phone (202) 554-1600

Testimony of Leland H. Swenson, President, National Farmers Union

Thank you, Mr. Chairman. I am Leland Swenson, President of the National Farmers Union. On behalf of our 300,000 farming and ranching families, I am happy to be a part of the ongoing effort to make the Agricultural Credit Act of 1987 fulfill its purposes. Our members are grateful for the commitment that you and Chairman Leahy have shown to the lenders, borrowers, and taxpayers whose interests are advanced by proper implementation.

For the next several weeks we are really in the eye of the storm, Mr. Chairman. The tumult surrounding the Farmers Home Administration's handling of the notice of loan service options has diminished with the ticking of the 45 day clock, while it is yet too soon to know how many restructuring applications will be denied and possibly appealed. But within this time period, FmHA is facing a self-inflicted administrative burden that surely has even the most dedicated county supervisor updating his resume.

Section 605 of the Act describes the requirements for notifying delinquent FmHA borrowers of the possibility of consideration for loan restructuring. There are several supplementary and explanatory items to be included with the notice of loan service options, which account for the size of the packet received by borrowers. However, the only statutory requirement for borrowers within 45 days of receiving the notice is to submit a written request for debt restructuring consideration. It was the Farmers Home Administration, not the Congress, that decided to require all information pertinent to a restructuring application to be provided within the 45 day time frame. And now it is the Farmers Home Administration that is faced with the statutory deadline requiring restructuring applications to be processed in 60 days.

It is inconceivable to us how, with all of the applications coming in at roughly the same time, agency employees can be expected to meet their deadlines and still provide the kind of interactive negotiated process that Congress envisioned. Instead of lender and borrower sitting down together to seek out the least cost alternative for resolving a debt problem, the initial results spewed out of the DALR$ computer program will become determinative. In 13 states and 2 territories, more than 40% of FmHA borrower's received the notice. Such numbers might have been manageable had the agency started by requiring a written request for restructuring consideration within the 45 days, and then worked with borrowers to gather necessary information from creditors, other USDA agencies, etc. as quickly as reasonably possible. Completed applications could have been filed in a more orderly fashion, allowing a smoother workflow during the processing period. Or, FmHA could have prioritized its delinquent loans by sending out the first round of notices to those borrowers with the best chance of having a farm operation to restructure, for example those who were less than two years behind, resolving other cases as time permitted.

Approximately 30 days into the 45 day period, Acting Administrator LaVerne Ausman informed FmHA regional, state, and county offices that the agency would no longer require certain

forms in the packet to be completed within 45 days, and that a "rule of reason" was to prevail. While we commend Mr. Ausman for recognizing the problems facing borrowers scrambling to comply with the 45 day deadline, it is most unfortunate that the "rule of reason" was absent at the beginning and, once again, the rules had to be changed in the middle of the process. Borrowers received new notices from FmHA with new guidelines -- I would hasten to add not always the same new guidelines -- that led to a "rule of confusion" as much as anything else.

Throughout all of this, several farm and religious groups here in Washington pulled together for an all-out campaign to reach borrowers who received the notice packet and help them to understand and preserve their rights. I am proud of the joint effort put forth by the American Agriculture Movement, Interfaith Action for Economic Justice, the League of Rural Voters, the National Save the Family Farm Coalition, and the National Farmers Union. Together, we produced an informational brochure and, with funding from Willie Nelson's FarmAid project, we sent a first class mailing to every borrower on FmHA's list. The brochure included a state-by-state list of hotlines and sources of more information, including outstanding materials prepared by the Farmers Legal Action Group.

By sending the brochures out first class, we had returned to us all the mail that was undeliverable as addressed, 6,725 envelopes. We believe that most of the people who did not get our brochure also did not get their notice from FmHA, since we used the agency's mailing list. Since the Act requires a written request for restructuring consideration to occur within 45 days of receiving FmHA's notice, it remains to be seen how the agency will handle its undeliverable mail. Obviously, FmHA can't be expected to hire 6,725 private detectives, but we hope the agency will make maximum use of the news media and other avenues to publicize availability of the programs. The returns from our mailing were sorted, repackaged, and mailed out to state and local affiliates, often churches, in an effort to reach borrowers who might still be in the community.

In sorting through all of those envelopes, several trends emerged which cause us some concern. First, there were many envelopes returned because a forwarding order had expired; in other words, the post offices had a better idea than FmHA where these individuals could be found, but they weren't telling. Certainly, when someone moves they have some obligation to inform their creditors of their new address. But, we'll never know how many borrowers may have told their county supervisors where they were going, and the information never made it into the FmHA computer in St. Louis. Nor can we be sure how many "forwarding orders" reflected a change in postal designations from rural routes and box numbers to street addresses. In either event, greater cooperation between FmHA and the U.S. Postal Service would have been helpful.

Second, the mailing labels contained the names of single individuals. Many envelopes were returned with the word "deceased" handwritten across them. In most cases involving married couples, both the husband and wife must sign the loan

agreement. It was not clear from the returned mail if FmHA might have sent separate notices to each spouse. If not, we are very concerned about how many surviving spouses may not have gotten their FmHA notice because it was addressed solely to their deceased husband.

Third, there were some typographical errors in FmHA's mailing list that kept mail from reaching its proper destination. In some cases, zip codes were missing or numbers were transposed. In a few others state abbreviations were wrong or even transposed. Given the tens of thousands of notices that went out, the rate of error was extremely low, but we hope that the "rule of reason" will be extended to these borrowers as well, as the agency eventually moves to foreclosure.

Outside of Washington, many efforts were made on the state level to reach out to borrowers who received the notice packet and help them complete a restructuring application. The value of these efforts has been shown by the levels of response. In Minnesota, for example, 41.1 percent of the FmHA borrowers were sent notices, and more than 60% of them have applied for loan servicing. In neighboring Wisconsin, 29.9% of the FmHA borrowers were sent notices, yet only about 14% of them have applied for loan servicing. We believe that the difference in Minnesota came from a coordinated state effort between the Minnesota Department of Agriculture, the state Extension Service, and various private advocacy groups to make assistance available to each borrower who wanted it.

The first wave of loan service notices was issued under interim final rules. Although the public comment period has closed, we hope FmHA will continue to learn from its experiences and address several concerns in its final rules.

One area yet to be resolved is whether borrowers will have access to the DALR$ computer program, or even a printout from the program, to use in designing their restructuring applications. Many borrowers have been told that they don't need DALR$ since it doesn't come into play until the application is processed, but that is like asking someone to shoot at a moving target wearing a blindfold. Information on such things as projected commodity prices, land values, etc. can make or break a cashflow plan. After several Freedom of Information Act requests, FmHA has decided to sell the DALR$ program, but the additional software and hardware required to make the program work render it virtually cost prohibitive. This is another area in which the "rule of reason" should dominate, and borrowers at least should be given a printed copy of the program to see the critical underlying assumptions being made by FmHA.

Several of the calls that came into our office were from former borrowers who had already completed a Chapter 7 bankruptcy and had been discharged from their debt to FmHA. Some of these callers were interested in farming again, but were concerned that FmHA would consider a restructuring application only after they reaffirmed the debt, rather than requiring reaffirmation after the borrower demonstrated the ability to repay the debt by filing an approvable application. Other callers were not interested in farming again, but were panic-stricken at the thought that FmHA

might not be finished with them yet.

A few others were not interested in any of the primary loan servicing programs, but they did want to apply for the preservation programs like homestead protection and leaseback. Their questions were: first, whether they would have to reaffirm the debt in order to apply, since the same package of forms was to be used to apply for all servicing options; and second, whether their former property was considered to be in FmHA inventory if FmHA still hadn't officially taken title. The legislative debate over eligibility for preservation loan servicing revolved around the fear that borrowers would have an incentive to stop paying their loans, give the property to FmHA, and then exercise a right of first refusal to buy the property back at market value. Clearly, an insolvent debtor who had to liquidate under Chapter 7 is not an individual who simply stopped paying his debts. Financial distress was demonstrated by the very fact of the bankruptcy. A prior owner whose debts to FmHA have been discharged, who can demonstrate that he would still be unable to manage the payments, should not have to reaffirm the debt just to apply for preservation loan servicing, such as homestead protection, on the acquired property.

The question of whether preservation loan servicing rights attach to property which, through no fault of the prior owner, has not been technically taken into inventory is another area in which we hope the "rule of reason" will prevail. If these issues are not resolved in the final rules, then FmHA should issue an Administrative Notice to its offices instructing its employees how to handle these situations.

Mr. Chairman, much remains to be seen of FmHA's implementation of the Agricultural Credit Act of 1987. At this point, no one knows how many restructuring applications will be denied and possibly appealed. No one knows how much inventory land will be classified as suitable and sold to prior owners, or targeted to socially disadvantaged individuals. No one knows the extent to which last summer's drought will stress the new loan servicing system and mediation programs. We hope that FmHA will quickly implement the operating loan refinancing idea in Section 312 of the Disaster Assistance Act of 1988, and that the lack of progress in setting up the demonstration program helping FmHA eligible borrowers to purchase Farm Credit System inventory land is not indicative of a lack of cooperation among agricultural lenders. Finally, it remains to be seen whether the combined impact of restructuring and mediation will keep people from filing bankruptcy or if the tax implications of debt write-down, shared appreciation mortgages, and conservation easements will be an overriding consideration.

Mr. Chairman, thank you for this opportunity for input into the oversight of this important title of the Agricultural Credit Act of 1987. Before turning to any questions you might have, I would like to take the opportunity to request additional hearings, not only on the subjects I just mentioned, but also on the Farm Credit System titles of the Act; particularly with regard to the budgetary impact of financial assistance to System institutions.

PREPARED STATEMENT OF DAVE VELDE, GENERAL COUNSEL, NATIONAL FARMERS UNION

DURING THE COURSE OF THE LAST 3-4 YEARS I HAVE BEEN INVOLVED IN REPRESENTING WELL OVER 100 FARM FAMILIES AS THEY APPROACH THE PROSPECT OF DEBT SETTLEMENT. THROUGH THE COURSE OF THIS PROCESS I HAVE REPRESENTED FARMERS IN PRIVATE NEGOTIATIONS, BOTH INFORMAL AND FORMAL MEDIATION AND BANKRUPTCY AND EVERYTHING IN BETWEEN. IT IS FROM THIS BASIS THAT I OFFER SOME OBSERVATIONS REGARDING THE RESPONSIVE POSITION THAT I FEEL THE AGENCY IS NOW IN AS THEY ATTEMPT TO RESPOND TO THE REQUESTS FOR DEBT SERVICING.

I WOULD ADD THAT I FEEL IT IS VITAL TO CONSIDER THE AGENCIES POSITION IN LIGHT OF WHAT I BELIEVE TO BE A FAIR CHARACTERIZATION OF THE GOAL OF THE PROCESS. THE GOAL AS I UNDERSTAND IT FROM READING THE LANGUAGE OF THE STATUTE AND THE SUPPORTIVE LEGISLATIVE HISTORY IS TO MODIFY THE DELINQUENT BORROWERS LOANS SO AS TO WHERE EVER POSSIBLE MAINTAIN THE FARM OPERATOR WITHIN THE PARAMETERS IN MAXIMIZING THE RECOVERY TO THE AGENCY.

AS I UNDERSTAND THE STATISTICS, THE AGENCY REPORTS SOME 35,000 FAMILIES HAVE RESPONDED REQUESTING DEBT SERVICING. THATS A LOT OF WORK. UNDER THE AGENCIES RULES IT MUST RESPOND TO THESE REQUESTS WITHIN 60 DAYS. I DO NOT BELIEVE THAT THAT IS REALISTIC. I DO NOT BELIEVE THAT IT CAN BE ACCOMPLISHED AND DO JUSTICE TO THE STATUTORY GOAL STATED ABOVE.

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I HAVE SAT WITH PEOPLE CONFRONTED WITH THE PROSPECT OF COMPLETING THE APPLICATION FORMS SENT OUT BY THE AGENCY. AND DURING THE COURSE OF THAT PROCESS WE WERE CONSTANTLY CONFRONTED WITH QUESTIONS THAT COULD NOT BE ANSWERED ON A UNILATERAL ONE TIME BASIS.

THE PROCESS OF DEBT SETTLEMENT, BY DEFINITION MEANS, THAT BOTH SIDES TO THE PROCESS MUST SACRIFICE AND THAT IS APPROPRIATE. HOWEVER THERE ARE TWO FUNDAMENTAL CONSIDERATIONS HERE. FIRST, THE CREDITOR SIDE IS MADE UP OF MORE THAN JUST THE FARMERS HOME ADMINISTRATION. SECOND, DESPITE THE NATURAL DEBTOR-CREDITOR TENSION MUTUALLY ADVANTAGEOUS ALTERNATIVES NEED TO BE IDENTIFIED, REVIEWED AND AGREED TO.

TO THE FIRST POINT, A TREMENDOUS VARIETY OF FACTORS AFFECT THE CREDITOR MIX AND THE RELATIVE SECURITY AND THUS MOTIVATION OF THE DIFFERENT CREDITORS. IN OTHER WORDS, WHO IS SECURED, UNSECURED OR UNDERSECURED AND TO WHAT EXTENT. THIS PROCESS ALONE CAN TAKE SOME TIME FOR EVERYONE TO APPRECIATE. FROM THIS BASE HOWEVER COMES THE QUESTION OF WHICH PARTIES WILL AFFORD MODIFICATIONS, TO WHAT EXTENT AND UNDER WHAT TERMS.

TO THE SECOND POINT, THROUGH OUT THE PROCESS DESCRIBED ABOVE ALTERNATIVE PROPOSITIONS FROM BOTH SIDES OF THE PROCESS NEED TO ADDRESSED.

THE FRAMEWORK FOR THIS ANALYSIS IN ITS MOST BASIC FORM ASKES THREE QUESTIONS.

1. HERE IS THE AMOUNT OF YOUR TOTAL DEBT CAN YOU AFFORD TO SERVICE THAT AMOUNT.

2. HERE IS THE VALUE OF YOUR ASSETS CAN YOU AFFORD TO SERVICE DEBT AT THAT LEVEL.

3. HERE IS THE AMOUNT AVAILABLE FOR DEBT SERVICE AFTER DIRECT PRODUCTION COSTS AND LIVING ARE FACTORED OUT WILL THE CREDITORS BE SATISFIED WITH THIS AMOUNT.

WHILE TIME TODAY PRECLUDES AND COMPLETE DISCUSSION OF THE PROCESS OF DEBT RESTRUCTURING THE CRITICAL POINT I WANTED TO MAKE BY THE ABOVE DESCRIPTION IS THAT IT IS A TIME CONSUMING PROCESS. BUT AFFORDING THE PROPER TIME IS VITAL TO THE FULFILLMENT OF THE GOAL OF FARMER RETENTION AND AGENCY RECOVERY.

IF WE WERE TO ASSUME THAT EVEN AS FEW AS 10 HOURS WERE ALLOCATED PER FILE FOR THIS PROCESS THE RESULT REVEALS A MASSIVE WORK LOAD. SPECIFICALLY, 35,000 APPLICATIONS TIMES 10 HOURS DIVIDED BY 40 HOURS EQUALS 8750 WEEKS WORTH OF WORK. IN ORDER TO

BE DONE WITH IN THE 60 DAY REQUIREMENT, THAT WOULD REQUIRE OVER 1000 PEOPLE DOING NOTHING BUT DEBT SETTLEMENT WORK.

(8750 DIVIDED BY 8.5 WEEKS)

A VITAL ASPECT OF THE DEBT SETTLEMENT PROCESS IS THE QUESTION OF TAX LIABILITY FROM DEBT RESTRUCTURING. I WISH TO ADDRESS THREE ITEMS.

1. CAPITAL GAINS. OFTEN THE BEST SOLUTION TO DEBT RESTRUCTURING IS THE LIQUIDATION OF SOME OF THE FARM ASSETS. WHETHER THIS IS DONE BY DIRECT SALE OR SURRENDER TO THE SECURED CREDITOR IT REPRESENTS A SALE AND CAPITAL GAINS TAX MUST BE ADDRESSED.

2. SHARED APPRECIATION AGREEMENTS. THE USE OF SHARED APPRECIATION AGREEMENTS MAY POSTPONE THE AFFECT OF NEGATING TAX ATTRIBUTES FROM DEBT FORGIVENESS FOR UP TO TEN YEARS BECAUSE THAT MUCH TIME IS NEEDED TO DETERMINE THE EXACT SCOPE OF THE DEBT FORGIVEN.

3. CONSERVATION EASEMENTS. TRADITIONALLY EASEMENTS ARE CONSIDERED TO BE A ZERO BASIS ASSET AND THE GRANTING OF SUCH AN EASEMENT IN THE DEBT SETTLEMENT PROCESS CAN RESULT THEN IN CAPITAL GAINS ON THE TRANSFER.

Senator BOREN. Thank you very much. I think that is a good point and I am sure we will proceed to look at the Farm Credit title as well.

Now we will hear from Mr. Benny Bunting of the National Save the Family Farm Coalition of Oak City, North Carolina.

Mr. Bunting, we are very happy to have you today.

STATEMENT OF BENNY BUNTING, CHAIRMAN, CREDIT COMMITTEE, NATIONAL SAVE THE FAMILY FARM COALITION, OAK CITY, NC

Mr. BUNTING. Thank you, sir. I would just like to mention a couple of things on this packet. The packets I have seen did not say anything about a rule of reason. They said I had to have the forms in, in 45 days.

I know I live back in the sticks, in Oak City, but it is not fair for people that did get a message out on the media, to only send in the four. The point I am getting at is that the hard line that FmHA came out with originally was that we had to have the whole packet in.

Senator BOREN. The whole packet.

Mr. BUNTING. The whole packet, and it says so on the face of the packet, and also, that FmHA county supervisors were instructed not to assist in filling them out.

Now that changed with rule of reason, but if I was one of the people that went into my county supervisor and talked to him, early on, and he said no, you have to have the whole thing in and I cannot assist you—you know—we were hit in the face with this all at one time. Then you left that office. We know nothing about a rule of reason. It was not put out where everyone knew about this. It was not put out then to go back to your county supervisor; he will assist you.

We know you have never filled out a farm home plan; he has always done it in the past. And then he said, I cannot help you. You know, the rule of reason did not get out to the farmers that I know about.

Now so much has been said about the packet, I would like to get over to a couple of other things that I do see as problems with implementation of the Credit Act.

Now, I have the prepared testimony here, I will try to paraphrase a lot of this and just summarize. But we have borrowers. Mr. Harold Hassell is a borrower I am going to speak about now, that applied on January 8, 1988, for leaseback/buyback of inventory property.

He was finally acknowledged to be eligible on August 4, 1988. The property was leased to a third party while he was applying for a start-up hog operation, which was ludicrous.

In his letter, I have copies of, it said, "We'll get back with you in November or December," and this was in September when this letter came in.

So a start-up operation for hogs was going to last 3 months, and that man was going to be gone? You know, that did not make sense.

Then they come out and say, look, Mr. Hassell, you do not qualify. It was a family farm corporation. The former owner was—you were contacted under the old regs. It was August 4, 1988, now, but they were saying it was under the old regs. So you are an entity of the corporation, not the corporation itself, so you will not qualify.

They were saying that the effective date of the act was October 14, 1988. Three or four months ago was the effective date. So all these people that between January 6 and October 14 were not under the umbrella of the 1987 Credit Act, it did not make sense.

Now some calls to Mr. Hertzler did prevail, that in North Carolina at least, they did rescind and say the effective date was January 6.

But for that mentality to have been out, through State offices, is not acceptable; it is just not acceptable. The intimidation that is still coming in. In my prepared testimony, Mr. Hassell's case, he actually applied for financing opportunities also.

He was assured that even though there was some antagonism between he and the local office, that under the 1987 Credit Act, that we were ensured an independent appeals officer.

I have got a letter that shows what he got. You know, he was reassured—look, you are going to talk to somebody that is unbiased.

Senator BOREN. Different.

Mr. BUNTING. He has never talked to anybody unbiased. The only part of the 1987 Credit Act appeals system he got was a letter from the national office, just sustaining what had happened on the local level.

He never met with an independent hearing officer. How did they come in halfway? He was supposed to have met with an independent hearing officer. Then the end result was supposed to be a review by the National Review Committee. You know, what has happened to this independent appeals process?

It is not there. These people are in a gap. Still on inventory property——

Senator BOREN. Do you set that out in your full statement as to the name of the person that did not receive it, and so on?

Mr. BUNTING. Yes, sir, and I have the letter that came from—attached that comes——

Senator BOREN. Good. We will enter that in the record and we will follow that up, because there is supposed to be an independent appeals process. You are quite right.

Mr. BUNTING. With inventory property, another point I would like to bring out is not the conservation easement, but with inventory property the FmHA is having to make application to the U.S. Department of Fish and Wildlife Service for plans for the inventory property.

I have letters that show that it took 8 months for a completed plan from the Wildlife Department, and when it comes back it is not an easement because an easement, from my understanding, is voluntary. You know, you participate in that for a reduction maybe in the value of the property on the leaseback/buyback.

These are deed restrictions that are attached according to what the Wildlife Department says needs to go on that property. Though the property would have been in row crop, was not by the ASCS

counted as highly erodible or wetland, there are still deed restrictions. You cannot crop it; you cannot graze it; you cannot harvest the production of logs.

You cannot put it in the CRP. You can do only one thing: pay taxes on it. That is the only thing you can do with it when it comes back with these tax restrictions, and they go with it for the life of that land, which is eternity for all of it.

And it looks to me like when you—those deed restrictions are a transfer of property for conservation purposes, which says in the statutes that I have seen, that that can happen only after first right of refusal, if they are selling to a third party.

I think some clarification needs to come about on this issue because I see it as being big on inventory property.

The tax problem. I agree wholeheartedly, and you addressed that in a hearing in September, that there would be, hopefully, new legislation to address the tax implications because if things stay as they are, the debt restructuring opportunities, and especially the preservation opportunities under the Credit Act, are going to be useless to borrowers.

Senator BOREN. Because it is treated as a taxable advantage that is given to you, a taxable event.

Mr. BUNTING. What is the difference who the debt is to? If it is FmHA or if it just revolves over to the IRS that is not sufficient.

We would really like to thank this committee, especially, for the work on the Ag Credit Act because it does have the potential to strengthen rural America, but we have to have constant oversight.

There are many of these improvisions that are coming up, between the local supervisors, the attitude of our State people, and I cannot believe the mentality that comes down.

Just thinking that Congress is going to let these loopholes continue to hurt borrowers. We appreciate the attitude that Congress has, the intent of Congress, and we thank you. We have some more provisions in this testimony that we would appreciate some individuals being looked into, helping some of these people that have been denied opportunities under the 1987 Credit Act.

[The prepared statement and attachments of Mr. Bunting follow:]

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STATEMENT OF BENNY BUNTING, CHAIR - CREDIT COMMITTEE, NATIONAL FAMILY FARM COALITION BEFORE THE SENATE AGRICULTURE CREDIT SUBCOMMITTEE. -- January 24, 1989

As my testimony begins, I would first like to reflect on history. Can we in this room remember a time when things down on the farm weren't as good as they are now. My answer would be yes. There was a time not long ago when farmers had to struggle as individals with nature and unrealistic unpredicatble credit. There was a time not long ago when Members of Congress and their local farmer constituents did not communicate. Now another question, have you made a difference in our present? The answer again would be yes. New drought legislation helped farmers in their battle with nature and the Agricultural Credit Act of 1987 has the potential for strengthening rural America. For this potential, speaking on behalf of farmers and ranchers of The National Family Farm Coalition I express our gratitude.

Since the last hearing, FmHA delinquency notices were mailed to some 83,000 borrowers and the 45 day deadline for return of the forms has passed. For farmers and farm advocates across the country, this new year is a time of great uncertainty. The information contained in the packet is what the progressive farm groups fought for, but FmHA's implementation was the most narrow and rigid route possible.

The legislation simply stated that the borrower needed to respond in writing for the service options. FmHA's 45 days was the shortest time period possible, calendar days not allowing for holidays or weekends. As for response, a completion of all nine forms in final dress with no further corrections overwhelmed many borrowers. County Supervisors were instructed not to assist borrowers in filling out their forms. FmHA's hard line aroused an uproar from church groups, farm groups, state Dept's of Agriculture, individuals and outraged Members of Congress. FmHA succumbed to the pressure and modified their position on the number of forms required within the 45 day response period in mid-December. But, as one of 80,000 FmHA borrowers who received the packet, I received no notice on this policy change. For many farmers, this information could have been a key factor in their submission of their packets under the deadline. County Supervisors were advised to be cooperative and assist borrowers with filling out forms. Why does there have to be an uproar that either mandates or intimidates FmHA to do what is in everyone's best interest. Congress must continue the oversight and FmHA be dealt with accordingly or we will continue to lose one of America's most valuable resources, the experience and expertise of the family farmer.

Loan servicing options available to FmHA borrowers accentuate a need for an amendment to the IRS tax rules regarding debt-write downs, conveyances, recovery value buy-outs and debt settlements. Chairman Boren made reference to tax law changes at the September FmHA Oversight Hearing. The major question asked by farmers is whether their current FmHA debt if restructured will be translated into an IRS debt. For farmers who completed their forms within

the 45 day deadline, the answers to these questions are unknown. The FmHA application instructs a farmer to consult their accountant who without instructions from the IRS is equally unclear. We urge this Subcommittee to take an active role in motivating the needed changes. Without these tax law reforms many of the new rights under this Act are lost.

Learned, indoctrinated policies become habitual practices. Changing career-long habits takes a serious commitment to a new concept. A case in point. Harold Hassell applied for leaseback/buyback on Friday January 8th, 1988. He was an entity (Vice-President) of a family corporation. His son is the President but Harold had built the hog operation. Mr. Hassell applied for financing but met with resounding local office resistance. The former owner was reassured that the new Credit Act afforded them a new and improved appeals process. So he waited with optimism for his national independent appeals hearing, an opportunity to present his case to an unbiased FmHA person. A copy of the cold water is attached. NO HEARING. What happenened, Mr. Boren? I remember a face to face hearing having such importance that language stating that even for borrowers in remote areas, a telephone conference call would only be used at the request of the farmer. To us, that meant appeals would be face to face unless the farmer/rancher requested otherwise. Next, the County Supervisor acknowledged the lease-back opportunity on August 4, 1988. The process dragged out and the operation was leased for a start-up hog unit to a third party while Mr. Hassell was applying for his rights. A letter from FmHA stated, "we will be back in touch with you in late November/early December. Next, in late December, FmHA's position was stated to be, if the offer to the former owner was prior to October 14, 1988 the expanded list for right of first refusal in the Ag Credit Act did not apply. We could not believe or understand their determination to undermine borrower rights legislated by Congress. It took calls to the FmHA National office to establish the effective date of the Act to be January 6, 1988. Last week Mr. Hassell was told he could lease the property when and if the current operator vacates (which is doubtful) and he pays a years' lease upfront. Is upfront lease payment demonstrating the intent of Congress? We would like to know the lease rate and terms to the third party now occupying the facility? Mr. Hassell asked that we convey his thanks to you for the intent of Congress in lease-back/buyback legislation and his disdain for the sometime in someplaces vindictive bureaucracy implementing the Act. It is in everyone's interest to let reason and resolve prevail.

Mr. Hassell's North Carolina case is certainly not an isolated situation. In the past few days, we have heard of similar cases in Nebraska and Illinois. We certainly intended and it seemed that Congressonal intent was clear that every effort should be made to ensure that land that was in FmHA inventory on January 6, 1988 should come under the new guidelines with the express intent to keep this land in family farming operations. This issue should not require court action which depletes both the farmer's and FmHA's scarce resources to ensure that farms remain productive.

While we are addressing leaseback/buyback another problem arises (views of the U.S. Fish and Wildlife Service). The time for the

completed plan can exceed eight months. The deed restrictions are very cumbersome and often not logical. Adjacent landowners are not affected and if you cannot crop it, you can't graze it, can't log it, can't put into CRP, so many can'ts , it sounds like the "transfer of farm inventory property for conservation purposes" could take preference over previous owners' opportunities which is contrary to the Act. Continued Congressional oversight on this issues seems necessary.

CONCLUSION

I appreciate the opportunity to present some of our concerns on the ongoing implementation of the Agricultural Credit Act of 1987. We would urge Congress to inform FmHA to issue their final regulations reflecting both the comments received during the public comment period on the interim final regulations and the experiences of the first round of notices.

We worked together with a coalition of farm and religious organizations to inform borrowers of their rights under the law. FarmAid helped with funds enabling us to mail information to FmHA's list of borrowers receiving delinquency notices received under a FOIA request. The Farmers' Legal Action Group (FLAG) produced a video and written materials to assist farmers.

We are working through the Credit Committee of the Family Farm Coalition to monitor how the Act is working. For all the farmers who submitted their applications, the 60 day deadline for an answer from FmHA is how underway. For those who didn't submit their applications, their next step are the preservation loan servicing options. We continue to be very concerned about the computer program, DALRS, that is analyzing a farmers' eligibility and the fact that it is not available for use by farm advocates to help farmers through the process. We hope that this hearing is the first of many to examine the key borrower rights provisions that are in the Act including appeals, county commmittee reforms, and the targetting of funds for socially disadvantaged farmers.

We look forward to working with you during this session of Congress. Thank you for the consideration of our views.

(Attached material of Mr. Bunting follows:)

United States Department of Agriculture
Farmers Home Administration
National Appeals Staff
3101 Park Center Drive
Alexandria, VA 22302

OCT 24 1988

Mr. Rupert H. Hassell
Route 1, Box 538
Roper, North Carolina 27970

Dear Mr. Hassell:

This is in response to a request received on your behalf, from your attorney, Dallas W. McPherson, for a review of the determination made by the Farmers Home Administration (FmHA) Washington County Committee that you are ineligible for farm ownership (FO) loan assistance.

We have carefully examined the documentation contained in the FmHA case file, listened to the audio tapes of the appeal hearing held on May 23, 1988, and considered the information contained in the hearing notes.

We have determined that the Washington County Committee applied the appropriate FmHA regulations in making its determination. Under the Code of Federal Regulations, Volume 7, Part 1943, Subpart A, section 1943.12 (a), the County Committee must consider several factors in determining whether or not to certify an individual applicant eligible for FmHA FO assistance. These include:

A. Having the character (as related solely to debt repayment ability and reliability), managerial ability and industry to carry out the proposed operation;

B. Honestly trying to carry out the terms and conditions of the loan.

It is clear the FmHA County Committee considered the appropriate regulations.

Next, we determined that the decision made by the County Committee is supported by the following facts:

A. The available information indicates you have not, throughout your association with this Agency, exhibited the managerial ability and industry to carry out the proposed operation. Your FmHA accounts were, as you indicated, not in arrears prior to 1980. There are, however, no supporting facts that this was due solely to your efforts and abilities, as other credit was obtained during this period from the Federal Land Bank (FLB), utilizing FmHA subordination authorities to provide for restructuring of liabilities.

FmHA Farmers Home Administration is an Equal Opportunity Lender
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

B. Form FmHA 462-1, "Record of Disposition of Security," although not directly indicative of willful intent to convert security property, does not provide a satisfactory accounting of secured property listed on form FmHA 440-4, "Security Agreement." This, in conjunction with your admission that you willfully converted FmHA security and utilized the proceeds in an improper fashion, is indicative of your unwillingness to honestly carry out the conditions and terms of the proposed loan.

Accordingly, we have determined the decision made by the County Committee is based on FmHA regulations and is supported by the facts. Therefore, there is no legitimate basis for overturning the decision made by the Washington County Committee.

We regret that a more favorable determination could not be rendered. This review concludes the administrative appeal of your case.

Sincerely,

Pamela M. Dillon

PAMELA M. DILLON
Director
National Appeals Staff

INTENTIONAL BLANK

FARM AID
Keep America Growing!

Special Alert
to FmHA Borrowers

Special Alert
to FmHA Borrowers

November, 1988

Dear Friend,

I'm sending you this flyer as part of Farm Aid's efforts to keep family farmers on the land and in their communities and homes. We don't know your situation but we want you to be aware of your rights.

The Agricultural Credit Act of 1987 entities FmHA borrowers to a chance to restructure their loans. If you haven't already received it, soon FmHA will send you a packet called, "Notice of Availability of Loan Service Programs for Delinquent Farm Borrowers."

This notice is being sent to almost 90,000 borrowers—over 6500 people in Texas, almost 4000 in Minnesota, over 3000 each in South Dakota, Arkansas, Iowa, over 4800 in Mississippi, and so on. You are not alone!

The FmHA packet comes by certified mail. It has a complicated package of forms for you to fill out and sign. YOU MUST RESPOND BY COMPLETING ALL OF THE FORMS AND RETURNING THEM WITHIN 45 DAYS. Your response is your only chance to prove to FmHA that forcing you out of business would cost them more than working with you to restructure your loan. Restructuring your loan can include reducing the amount of debt that you owe.

If you do not respond to the FmHA notice on time, you will lose all your rights to restructuring and you may lose your farm to FmHA.

CONTACT SOMEONE FOR HELP. The back of this letter lists information that can help you. It includes phone numbers of hotlines Farm Aid has funded or used for referrals. It also includes the address for Farmers Legal Action Group (FLAG). You can write to FLAG to get a video and step-by-step manual for dealing with the notices. Or, call any of the groups listed on the enclosed flyer. They will tell you who can work with you in your local area.

I know that farmers are not to blame for the "farm crisis" and those of us at Farm Aid will continue to do everything we can to help.

Sincerely,

Willie Nelson

Willie Nelson

Services vary, and demands are extreme right now. Keep trying. Some of these numbers are offices, some are homes. 800 numbers only operate within the state listed.

AL	Federation of Southern Cooperatives	800/358-0488 205/652-9676
AZ	Rocky Mountain Farmers' Union	303/371-9090
AR	AR Conference of Churches & Synagogues Federation of Southern Cooperatives	501/375-1553 800/358-0488
CA	People's Action to Save the Family Farm CA Association of Family Farmers	916/294-5506 916/756-7420
CO	Colorado Rural Crisis Hotline Western Colorado Congress Rocky Mountain Farmers' Union	303/246-3416 303/249-1978 303/371-9090
CT	Rural Vermont	802/223-7222
FL	Fed. of Southern Cooperatives	800/358-0488 404/524-6882
GA	Fed. of Southern Cooperatives	800/547-1986 404/524-6882
ID	Idaho Rural Council Southern Idaho Family Farm Hotline	208/888-2984 208/537-6667
IL	Illinois South Illinois Farm Alliance	618/942-6613 618/656-8922
IN	Citizen's Action Coalition 317/921-1120 Farm Counseling Project	317/855-2265 800/548-9320
IA	IA Farm Unity Coalition/Prairiefire IA Farmer/Creditor Mediation Service	515/244-5671 515/244-8214
KS	FACTS Rural Outreach Coalition of KS KS Consultation of Cooperative Churches (Hays office) KS Farmers' Union	800/321-FARM 913/335-2337 913/272-9531 913/625-4972 316/241-6630
KY	Community Farm Alliance Federation of Southern Cooperatives	606/635-1882 800/358-0488
LA	Louisiana Interchurch Conference (can call collect) Rev. James Stovall Don Ewing Betty Puckett	504/924-0213 504/492-3565 318/776-5446
ME	Rural Vermont	802/223-7222
MA	Commissioner, Dept. of Food & Ag	617/727-3003
MI	MI Farm Unity Coalition	800/MI-FARMS 517/676-9099
MN	MN Dept. of Ag. Advocate Program Mediation Hotline Ag Center Groundswell MN Farmers' Union	800/652-9747 612/625-9721 218/681-6236 507/354-5797 612/771-3380
MS	Fed. of Southern Cooperatives Farm/Credit Mediation Service	800/358-0488 404/524-6882 800/247-3871 601/359-3639
MO	FARM Farm Counseling Services MO Rural Crisis Center	314/636-6005 816/465-7232 314/449-1336
MT	MT Assoc. of Churches Rural Ministries after hours: WIFE) Northern Plains Resource Council	406/252-5138 406/653-2492 406/248-1154
NE	Interchurch Ministries of NE NE Farm Crisis Hotline	402/476-3391 402/846-5578
NV	Common Ground Farm & Rural Ministry	503/221-1054
NH	Rural Vermont	802/223-7222
NJ	New York FarmNet	607/255-2525
NM	New Mexico Conference of Churches	505/255-1509
NY	NY Farm Alliance NY FarmNet	315/667-3294 800/547-FARM 607/255-2525
NC	Rural Advancement Fund/UFO Land Loss Prevention Project	919/542-5292 800/672-5839
ND	Farm Credit Counseling Hotline Dakota Resource Council (for further info) North Dakota Farmers' Union	800/642-4752 701/224-4769 701/227-1851 800/532-8672 701/252-2340
OH	Ohio Farm Alliance OH Farmers' Union	614/448-4801 419/523-5300
OK	Ag-Link (Ask for Ag-Link) Legal Aid of Western OK OK Farmers' Union	800/248-5465 405/525-2928 405/557-0020 405/239-6011
OR	Common Ground Farm & Rural Ministry	503/221-1054
PA	PA Farmers' Union	800/932-4629 717/234-4311
SC	Federation of Southern Cooperatives Rural Advancement Fund/UFO (East) (West)	800/358-0488 803/884-0893 803/297-8562
SD	Dakota Rural Action SD Farmers' Union	605/697-5204 800/262-3210 605/352-6761
TN	American Agriculture Movement of TN TN Family Farm Alliance	901/772-9673 800/338-2978
TX	TDA Office of Farmer Assistance Fed. of Southern Cooperatives	512/463-7679 800/358-0488 404/524-6882
UT	Utah Idaho Farmers Union Southern Idaho Family Farm Hotline	801/261-1221 208/537-6667
VT	Rural Vermont	800/FARMER1 802/223-7222
VA	Rural Virginia	804/782-9438
WA	Common Ground Farm & Rural Ministry	503/221-1054
WV	Community Farm Alliance of KY	606/635-1882
WI	Wisconsin Farm Unity Alliance	715/265-4242
WY	Wyoming Rural Support Network	307/532-5142

FLAG has materials that explain each step a farmer must take to respond to the new FmHA notices. They also explain how to prove that you are eligible for debt restructuring, homestead protection, and farmland leaseback/buyback. **TO ORDER**, complete this form and send a check to **FLAG, PO BOX 1708, Pioneer Station, St. Paul, Minnesota 55101-0708.**

Name _____

Address _____

_____

City _____ State _____ Zip _____

	quantity	total price
Written materials only @ $6.00	_____	$ _____
VHS video and written materials @ $16.50	_____	$ _____
Total amount enclosed		$ _____

THE FUTURE OF YOUR FARM IS AT STAKE

DON'T LET THE 45 DAYS RUN OUT ON YOU! FAILURE TO RESPOND COMPLETELY MAY RESULT IN THE FORECLOSURE SALE OF YOUR FARM.

HAVE YOU CAUGHT WIND OF THE AGRICULTURAL CREDIT ACT?

You now have new rights as a farmer/borrower in dealing with the Farmer's Home Administration (FmHA). The FmHA will soon be sending at least 90,000 delinquent borrowers a "Notice of the Availability of Loan Service Programs for Delinquent Farm Borrowers" . When you receive this notice it means:

YOU HAVE 45 DAYS TO GATHER AND PRESENT INFORMATION TO SAVE YOUR FARM

The groups who prepared this brochure pressured Congress to pass the Agricultural Credit Act of1987 with expanded rights for all FmHA borrowers.

With new rights come new responsibilities. It's up to all of us to make this Act work. Leland Swenson, National Farmers Union.

WHY NOW?

Farmers Legal Action Group (FLAG) successful court challenge of FmHA's illegal practices halted most FmHA farm foreclosures since May 1987. Under the new law, FmHA must start notifying borrowers of their new rights, including the right to restructure farm debt. Your notice is the signal to use or lose your new rights under the law.

Finally , in 1988 FmHA is required to restructure farm debts rather than foreclose if it saves the federal government money. This can save our family farms, our rural communities and makes common sense.-Helen Waller, National Save the Family Farm Coalition

STEPS TO PROTECT YOUR RIGHTS AND SAVE YOUR FARM:

The ***Notice*** will arrive by certified mail. You should:

1) Read the notice and all other materials sent by FmHA.

2) Contact your farm hotline, extension agent, attorney or the local chapter of one of the groups on this brochure for help.

3) Fill out all nine forms that you receive in the packet to apply for all *PRIMARY and PRESERVATION* loan options. If there are fewer than nine forms, contact your county supervisor.

-Submit an ASCS photo of your farm and circle your house and 10 acres to preserve your homestead rights in the future.

-Keep copies for your records; document any phone calls with letters. Save everything for future appeals.

4) Return the forms **by certified mail** within 45 days of the day you got them.

Almost one million people left rural America last year, while foreclosures were on hold. Our goal now is to hold on to not only 90,000 farms, but also a half million family members and over 10,000 rural businesses we cannot afford to lose. - Rev. Arthur B. Keys, Jr., Interfaith Action for Economic Justice

THE KEY TO THIS PROCESS: MAKE SURE YOUR CASHFLOW PLAN WORKS

FmHA is required to use primary loan servicing tools when restructuring costs them less than foreclosing on your farm.

To qualify, you must also show you can afford your family living and farm operating expenses , newly scheduled debt payments, insurance and taxes.

You must also prove 1) you cannot repay your loan due to circumstances beyond your control, and 2) you have acted honestly and in "good faith" tried to keep your agreements with FmHA.

PRIMARY LOAN SERVICING OPTIONS include:

1) *Loan Consolidation*-All similar loans combined for one payment
2) *Loan Rescheduling*-Chattel loan payments extended
3) *Loan Reamortization*-Real estate loan payment period extended
4) *Interest Rate Reduction*-Lower interest rates on loans
5) *Deferral*-Repayment deferred for 5 years and added at end of the loan. (Only if

1-4 don't work)
6. *Debt Write-Down*-Reduce loan principal and interest to as low as recovery value of the property (If 1-5 don't work).

Option # 6 requires you to sign a SHARED APPRECIATION AGREEMENT. This means you must share part of the increase in the value of your property over the next ten years with FmHA.

If you do not qualify for any of the options above, you may still be eligible for *PRESERVATION LOAN SERVICING OPTIONS*, which include:

1) *Homestead Protection*-You may purchase or lease your farm home and outbuildings plus up to ten acres of land for up to 5 years, with an option to buy the property.

2) *Farmland Leaseback/Buyback*-You can either lease the entire farm or buy it back from FmHA.

Within 60 days of submitting the forms you should receive a notice with a computer print-out explaining FmHA's decision on your eligibility for primary loan servicing. Please get help in analyzing the print-out and making your next decision..

IF YOU ARE DENIED RESTRUCTURING, YOU HAVE THE RIGHT TO APPEAL AND SHOULD DO SO.

REMEMBER YOUR RIGHTS:

You have the right to participate in state mediation programs and creditors meetings with the FmHA present. Mediation can help you design a feasible plan.

You have the right to appeal any decision made against you during this process through a new FmHA National Appeals System.

You are entitled to an informal meeting where you can discuss with FmHA any reason you were denied debt restructuring..

REMEMBER-YOU LOSE YOUR RIGHTS IF YOU FAIL TO RETURN YOUR FORMS WITHIN 45 DAYS.

When farmers get these notices I'm sure they will ask themselves why the 45 day deadline is so important when the FmHA hasn't taken any action against them for years. The answer is: it's the law. Ignoring the notice could cost you your farm . Susan Bright, Indiana Farmer

ASK FOR ASSISTANCE:

This brochure cannot answer all your questions. But, there are people in your community who can help you. Your success in restructuring your debts will depend on getting informed assistance.

Farm groups and the religious community care what is happening to you and your neighbors. Each call you make to us reaffirms the importance of our united efforts to seek justice for our rural citizens. Mary Ellen Lloyd- National Council of Churches Rural Crisis Issues Team

CHANGE THE UNDERLYING CAUSE OF YOUR CREDIT PROBLEMS:

Only better farm policy can change the underlying causes of the credit crisis: low prices. Congress will soon be writing long term farm policy.

Farmers can now stay afloat and save their farm from their creditors for the short term. But we're sunk if we don't get the new President and Congress to give us a fair price in the 1990 Farm Bill. If we can't earn at least the cost of production there is no long term future for family farmers or rural communities. David Senter - The American Agriculture Movement

WHERE TO TURN FOR HELP:

The following national organizations, representing family farm groups, religious agencies and denominations across the nation, worked together for fair credit provisions in the Agricultural Credit Act of 1987. This brochure was produced as part of a continuing effort to monitor the implementation of the new law and ensure borrowers receive their new rights. For further information and referrals contact:

American Agriculture Movement, 100 Maryland Ave. NE, Washington, DC 20002. (202) 544-5750.

American Family Farm Foundation, 100 Maryland Ave., N.E.Washington, D.C. 20002 (202) 547-6767

Interfaith Action for Economic Justice, 110 Maryland Ave. NE, Washington, DC 20002, (202) 543-2800. For additional copies of this brochure call toll-free 1-800-424-7292.

League of Rural Voters, Suite 255, 3255 Hennepin Ave. S, Minneapolis, MN 55408 (612) 827-6955

National Council of Churches Rural Crisis Issues Team, 475 Riverside Drive, Rm. 572, New York, NY 10115. (212) 870-2307.

National Farmers Union, 600 Maryland Ave. SW, Washington, DC 20024 (202) 554-1600

National Save the Family Farm Coalition, 80 F St. NW, Washington, DC 20001, (202) 737-2215.

Special thanks to Willie Nelson and FarmAid for funding this brochure, and for their continued support and commitment to family farmers.

FOR LOCAL ASSISTANCE CONTACT:

PRINTED BY NATIONAL FARMERS UNION EMPLOYEES
Denver, Colorado

December 16, 1988

Mr. Roland Vautour
Undersecretary of Agriculture for
Rural and Community Development
U.S. Dept. of Agriculture
Washington, D.C. 20021

Dear Mr. Vautour:

We appreciate the opportunity to have met with you, Mr. Ausman, Mr. Hertzler, and Mr. Babcock on December 15th regarding the urgent issue of the FmHA delinquency notices that have been received by over 80,000 FmHA borrrowers during the past month. As you know, we met with former Representative Cooper Evans to express our concerns on issues facing family farmers. This meeting was initiated by Presdinet-elect Bush during his meeting with Reverend Jesse Jackson. We appreciate the opportunity to establish this important dialogue with the Administration and look forward to resolving this immediate issue and other issues of major concern to farmer/borrowers across the country.

As we discussed at our meeting yesterday, we want to ensure that the process to afford debt restructuring is fair to all farmers and they receive their rights through a properly implemented Agricultural Credit Act. We agreed to follow up our meeting with a written discussion of our specific concerns.

FARM AND HOME PLANS OR CASH FLOW PLANS

FmHA regulations define what a feasible farm plan is at 7 CFR Section 1924.57 (53 Fed Reg 35680-35681 September 14, 1988). 7 CFR Section 1951, Subpart S requires that all borrowers applying for primary loan servicing present a complete "feasible plan" that shows that they can cashflow a restructured loan with a present value at least equal to the net recovery value. There are several problems with the instructions, and the directions given by local FmHA offices that are keeping farmers from filling out their Farm and Home plan completely and adequately. We are very concerned that an incomplete or inadequate form will result in farmers losing their opportunity to restructure. The specific problems are discussed below. Throughout the discussion, the Farm and Home plan to which we are referring is the one that borrowers are required to complete within 45 days.

A) Unit Price List

Feasible plan regulations state that each State Director must establish unit prices for all agricultural commodities produced in the state and to publish this in a state supplement. 7 CFR

Section 1924.57 (d)(2). It then goes on to say that farmers who have a proven accurate record to support a premium price for a commodity and/or contracts with well-established markets will be allowed to use these prices. This has been interpreted differently in the states; some are requiring that borrowers use the unit price list in their Farm and Home plan unless they can prove the premium price, others are requiring the state unit list price exclusively. Mr. Hertzler suggested yesterday that the use of the unit price list is not required. This needs to be communicated to FmHA county offices by Administrative Notice. The notice package gives no instruction on what can be used and borrowers need to be instructed.

b) Yields

The feasible plan regulations also contain specific criteria on how yields are to be projected on the Farm and Home plans. 7 CFR Section 1924.57(d)(2). Again, the notice package did not explain these specific yield projection rules. Since these rules represent a new formula for calculating yields it is especially important that these rules be explained to borrowers.

Furthermore, these yield projection rules also contain a very specific exception for yields in disaster years. Because borrowers in many parts of the country suffered very significant reductions in yields in the 1988 crop year, it is imperative that they know how this disaster year exception works. Nowhere in the notice package is this explained.

c) Five Year History

FmHA rules also require that the borrowers' Farm and Home plan projections be based on actual production and financial history of the past five years. 7 CFR Section 1954.57(d)(7). The rules do not go so far as to require borrowers to submit complete five year histories within the 45 days.

Some county and/or state offices are stating that the borrower must submit complete five year histories within the 45 day response period. Other offices claim that this is not required. The notice package is silent on this issue.

It is imperative that this issue be resolved and communicated to the FmHA county offices and borrowers that while five year histories need not be submitted in writing, borrowers must be able to show that their Farm and Home plans are based on five year histories.

We would also like to note that if the county offices have been complying with FmHA's own rules in the past, they should already have actual figures for the past five years in the borrower's file, which was gathered at each year-end analysis. The file including this information and any appraisals should be available to the borrower upon request.

Conclusion:

Since the Farm and Home plan must be submitted within the 45 day period and will probably be the key document in the farmer's file to determine approval of debt restructuring, it is imperative that the farmer know exactly what FmHA will accept as a completed form.

During our December 15th meeting, Mr. Hertzler stated that FmHA County employees will communicate and work with farmers to develop feasible plans if the initial plan is determined not feasible. If FmHA does not notify these borrowers before the Farm and Home plan is submitted, FmHA county office workloads will be significantly increased because they will have to review plans that will inevitably not meet the feasible plan difinition in the regulations. The failure to provide this information to the borrower could potentially require thousands of such reviews which would otherwise not be necessary. As well, borrowers will needlessly spend time and money to develop a plan that must be re-developed.

PROBLEMS WITH OTHER FORMS IN NOTICE PACKAGE:

"The Primary and Preservation Loan Service Purpose" notice (Attachment 1 to Exhibit A to Subpart S of Part 1951) lists nine forms which must be completed by the borrower and received in the FmHA office within the 45 day response period. Several of the forms are not self-explanatory and the notice package failed to explain to borrowers exactly what they must do to complete them. In other cases, the instructions on the forms are contradictory to what is in the notice.

a) Application Reference Letter

The "Application Reference letter" has traditionally been completed by the FmHA County Supervisor. In fact, the form's manual instructions say it is to be completed by the county office. In fact there isn't even the need for the borrower's signature. The borrowers are also told in the notice to complete the form themselves. In addition, no where in the notice is the borrower told who this form is to go to if the borrower is responsible for its completion.

b) Request for Statement of Debts and Collateral

This form is intended to verify the amount the borrower owes other creditors and whether the creditors claim a lien on any of the borrower's property. Again, traditionally, at least in many cases, FmHA sends this form to creditors. FmHA apparently expects to verify or document all of the borrower's outside debt. But the notice implies it is the borrower's responsibility to get the form completed.

Secondly, the form says it is to be completed by secured creditors. Some FmHA offices are saying that all creditors must complete this form, while others are saying that only secured creditors must complete it. The borrower has not been given adequate instructions on this matter.

c) Development Plan

There is a similar problem with this form. The form's manual instructions, which were included in all notice packages states it is to be completed by the County Supervisor. The notice instructs the borrower to complete the form.

d) Responsibility for form completion

With regard to the forms that must be completed by people other than the borrowers, it is imperative that the borrowers know exactly what is their responsibility in getting the forms completed within the 45 days. Some offices are saying it is sufficient to present proof that the forms were delivered to these other people. Other offices say they must be completed by the other people and back into FmHA within the 45 days. Oftentimes the borrowers does not even know who exactly should complete the form.

Because the time to complete the forms which must be completed by third parties is totally outside the control of the borrowers, FmHA should simply agree that the forms can be returned to FmHA if that the borrower deliver the form to the third party within the required time period.

HOMESTEAD PROTECTION FARM PHOTO

In addition to the nine forms included in the packet, the borrower is required to submit a photo of his/her farm with the Homestead Property outlined. This is an unnecessary requirement at the initial application stage since FmHA will not consider the borrower for Homestead Protection until after the borrower is considered for and denied primary loan servicing. Presumably, thousands of these borrowers will get Primary Loan Servicing and the photo of their homestead will be totally unnecessary. The appropriate time to ask for the photo is when FmHA begins to consider the farmer for Homestead Protection and sends them Exhibit K asking for additional information. It will save valuable time for the borrower and the ASCS office if this photo is not required until actually needed.

ADMINISTRATIVE NOTICE TO FmHA DIRECTORS

FmHA has demonstrated its intention to act reasonable when determining whether an application is complete or not by issuing the "Rule of Reason" electronic message on December 9th to State Directors. However, FmHA needs to go further to specifically

define what is acceptable within the 45 days and communicate this to FmHA local offices by Administrative Notice. It must also be communicated directly to borrowers that have received the notices. It is also important that this notice to farmers clearly state that if the 45th day falls on a weekend or holiday, that the next business day is considered the deadline as was stated at our meeting.

NOTICE PACKAGES RETURNED AS UNDELIVERABLE

At our December 15, 1988 meeting, Mr. Hertzler stated that if the certified mail notice packages are returned to the post office marked undeliverable, FmHA county offices are to send a notice package by regular mail to this same address. The regulations do not state this. This is a good policy which demonstrates FmHA's good faith effort to actually notify borrowers.

However, we think FmHA should go further. As we explained at the meeting, a mailing was sent by FarmAid to FmHA borrowers who were to receive the notices based on a list received from FmHA by the National Family Farm Coalition through a Freedom of Information Act request. Over 10,000 of the 83,000 sent have been returned as undeliverable. This raises serious concerns over how many of the FmHA notices were also undeliverable. Therefore, we ask that the National FmHA office require each State Director to issue a press release telling people that if they have FmHA loans and are more than 180 days delinquent, but have not received the notice package in the mail they should come in and pick one up so that they can apply for debt restructuring, homestead protection, and farmland leaseback/buyback options. It should be made clear that if borrrowers do not seek out their forms that FmHA will begin foreclosure and liquidation since the 45 days will have expired. This publicity will demonstrate FmHA's sincerity in trying to ensure that computer or address errors are not resulting in farmers losing their rights to servicing programs.

NEED FOR ACTION BY FMHA:

Because of these very serious failings in the new FmHA procedures, we request that the agency take the following steps:

1) Suspend the running of the 45 day response period until 45 days after a supplemental packet of information is provided to the 83,000 borrowers. This will give them time to complete the packets with the new information they have been provided. This clear direction will significantly reduce the problems related to the vagueness of the "Rule of Reason" and significantly increase the chances that borrowers will be treated consistently across the country.

2) Prepare and distribute to each of the 83,000 borrowers immediately a supplemental packet of information that addresses the unit price list, yields, five year production history, and third party form problems identified above.

3) The "Rule of Reason" needs to be more clearly defined with examples of what would be considered "good faith" efforts to meet the 45 day response deadline. Without this, the "rule of reason" appears to mean simply giving the discretion of what constitutes "good faith" to the county supervisor.

CONCLUSION

The issues presented in our meeting and further described in this letter are of major concern to family farmers across the country. Resolving the questions and concerns outlined is key to whether thousands of farmers will get their rights under the Agricultural Credit Act, which was signed into law almost a year ago. Every day is critical to the fair implementation of this process. We urge you to take the above outlined actions within 5 days to convey a message to FmHA borrowers that you fully intend to protect their rights and treat them fairly. Without this action the entire process is in jeopardy.

We look forward to a continued dialogue on these most important issues to family farmers and rural America.

Sincerely,

Roger Allison
North American Farm Alliance

Carolyn Kazdin
National Rainbow Coalition

Lou Anne Kling
Minnesota Farm Advocte

Ralph Paige
Federation of Southern Coops

Lorette Picciano-Hansen
Interfaith Action for
Economic Justice
Nat'l Council of Churches
Rural Crisis Issues Team

David Senter
American Agriculture Movement

Dixon Terry
Nat'l Family Farm Coalition

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

DEC 22 1988

Mr. Dixon Terry
National Family Farm Coalition
80 F Street, N.W., Suite 714
Washington, D. C. 20001

Dear Mr. Terry:

We appreciated the opportunity to meet with you and being advised of the concerns you and other Farm Advocates have relative to the debt restructuring program being implemented by the Farmers Home Administration (FmHA). As you know, it is very important that we keep our lines of communications open if we are to achieve our mutual objective of helping farmers restructure their debts.

We have carefully reviewed your three proposals. Since the Agricultural Credit Act of 1987 (ACT) requires borrowers to respond to the notices "within 45 days", FmHA will be unable to allow for any extensions. However, you are well aware of our efforts to work with borrowers who make a good faith effort to respond in the mandated timeframe. Also, in view of the tremendous effort by farm organizations and advocacy groups to inform and assist farmers in applying for the loan servicing programs of FmHA, we do not believe it is necessary to suspend the 45-day response period nor is it necessary to issue a supplemental packet to borrowers. FmHA borrowers have never been better informed about our Agency's programs as they currently are. It is our sincere belief that the vast majority of farmers seeking FmHA loan serving programs will be able to complete their applications within the prescribed timeframes.

However, in view of your deep concern and interest, we will discuss in detail, with our Field Offices, what constitutes the good faith effort which was alluded to in our memorandum dated December 9, 1988.

Basically, if the borrower submits:

- FmHA Form 410-1, "Application for FmHA Services"
- FmHA Form 431-2, "Farm and Home Plan" including the Balance Sheet

- "Acknowledgment of Notice of Program Availability" (Attachment 2),

- "Response to Notice Informing Me of FmHA's Intent to Accelerate My Loan" (Attachment 4)

they will be considered to have made a good faith response. These are very basic documents the borrowers are familiar with from previous contacts.

If the borrower is requesting debt restructuring through a Conservation Easement, he/she will have to submit a map of the farm delineating the area.

All other forms are for verification purposes and will need to be submitted before FmHA can finalize a workout plan. If that is not complete before the end of the 60-day period allocated to FmHA for a response, we will consider the application incomplete and discontinue the restructuring process.

We are preparing a news release for use by our Field Offices to attempt to contact those individuals whose notice packages were returned as undeliverable.

Once again, we appreciate your interest and dedication to this extensive project of adjusting farmers debt.

Sincerely,

ROLAND R. VAUTOUR
Under Secretary
for Small Community
and Rural Development

Senator BOREN. I appreciate your statement, and we are going to do that. We will follow up in these individual cases that are in your prepared statement.

Let me say also that I have let Chairman Bentsen and the Finance Committee know that I will seek hearings there, for possible action there on this tax question because it is a very, very serious one.

If we make the restructuring, the amount of the write-down, then taxable income, in a way that you cannot pay it, as you say, it does not matter whether you lose your land to the IRS or the Farmers Home Administration. It is all the same.

So we are definitely pursuing that, and I mentioned that Senator Baucus is now a cross-over member from this committee to the Finance Committee. Senator Pryor is as well. Senator Dole is as well.

So we are going to try to work on that and get the two committees to work together to come up with a solution.

Mr. BUNTING. Just one thing, quickly. This is a farm sale. Now the dates on this, the information for the sale is January 27. This is going to have to be addressed quickly.

What this is, is former owners were trying to buy back their property.

Senator BOREN. Yes.

Mr. BUNTING. They were not allowed. They thought they had a leaseback with option to purchase. In a subsequent lease it turned out just to be a lease without the option, but even that, it was a family corporation. The entity was allowed first right of—no—the corporation was allowed first right of refusal, but not the entities of the corporation, and they are not going to allow it.

They are going to sell this property on January 27. If we could have someone look at that, we would really appreciate it.

Senator BOREN. We will look into that. I promise you we will.

Mr. Voth, would you or Mr. Schieber want to go first? It does not matter; either one.

Senator HARKIN. May I go back to that last sale?

Senator BOREN. Yes.

Senator HARKIN. In that last sale you referred to Mr. Bunting, was Farmers Home involved with the previous owners in working on an arrangement, and they went ahead and offered it for sale to another buyer? Is that what you are saying?

Mr. BUNTING. Yes, sir. The former owners had a lease with option to purchase, and then they went back the following year. They were supposed to have it for 5 years. You know, they went back with a subsequent lease, and when it came out it just said—the second one just said lease, did not have an option.

And then, when they went to renew the lease, the FmHA told them, look, your lease has expired, we are going to sell the property, and they have advertised the property and it is going to be sold.

Senator HARKIN. Are they utilizing any of the demonstration project sources under the bill to try to get that land back?

Mr. BUNTING. No, sir. Not that I am aware of.

Senator HARKIN. One of the points that I wanted to raise, Mr. Chairman involves the Demonstration Project for sale of Farm Credit System inventory land using FmHA guaranteed loans. I apologize for my delinquency in arriving.

Senator BOREN. No. We are glad to have you. We know of your interests.

Senator HARKIN. I am sorry about that, and I think my staff told me that Senator Kerrey may have raised this point with Mr. Johnson earlier.

Under paragraph V of attachment 1 to the January 13, 1989, FmHA guaranteed loan regulations, FmHA has stipulated that on these demonstration project loans, Farm Credit banks can go ahead and sell the land to another buyer, even though they are working with the former owner, or perhaps a new purchaser, an eligible Farmers Home borrower, to use the Demonstration Project. The Farm Credit bank can go ahead and sell it, if the Demonstration Project deal has not been concluded already.

That was not the intent of the act. That is not how we put it in the act. Under the act, if the Farm Credit bank is working with a farmer to use the Demonstration Project, it should hold off on any sale until it figures out whether or not the sale will work with that farmer. Then, if it will not, the Farm Credit bank can sell the land.

Mr. Bunting appears to be raising a similar problem at FmHA. So I am wondering if FmHA was working with this farmer at that point in time, and yet went ahead and moved to sell the land out from underneath him.

That is contrary to what we put in the act.

Mr. BUNTING. That is what is happening.

Senator BOREN. We have to look into this situation because that is contrary to what the law is.

Senator HARKIN. And if you look at the language in paragraph V of the FmHA Demonstration Project regulations, that really is opposite of what we had in the bill, Mr. Chairman.

Senator BOREN. I think we will take this up with the agency as well, but we will use this case study to go into it, to look at.

Senator HARKIN. One last question. Did they subdivide that land at all? Are they subdividing it?

Mr. BUNTING. This is a farm that is in Illinois.

Senator HARKIN. Yes.

Mr. BUNTING. And I am aware of it only by telephone, as far as, you know, what has happened.

Senator HARKIN. You do not really know whether they subdivided?

Mr. BUNTING. I do not know if it has been subdivided. I know it was a family corporation. There are two brothers, is what is involved.

Senator HARKIN. I see. Because Mr. Chairman, the other point I want to raise is a similar one involving subdividing Farm Credit System inventory land for sale through the Demonstration Project. Paragraph II of attachment 1 to the FmHA guaranteed loan regulations, which deals with subdividing Farm Credit System inventory land for sale through the Demonstration Project, is really contrary to what we put in the bill.

In the regulations FmHA says the Farm Credit bank can go ahead and subdivide these farms for the purpose of maximizing their return.

In the act, it says very specifically that Farm Credit banks shall, if necessary, subdivide tracts in the interest of accommodating the

Demonstration Project borrower. The reason we put that in is—and I remember the discussions we had on that—that if you had, for example, a young farmer just starting out, and he could get a parcel of land and put it together with something else and get going, that is what we wanted to accommodate, not whether or not the Farm Credit institution could maximize their return on it by subdividing.

Senator BOREN. Absolutely not; no. The whole purpose of allowing subdivision was simply to make it economically feasible for the farmer you described to have a chance to get a part of it if they could not get all of it.

Senator HARKIN. Exactly, and FmHA has gone contrary to that in the regulations.

Mr. BUNTING. Because it said it could be subdivided into $200,000 units, family farm-size units. That was dangerous because you might have established what a family size—family farm unit is, a $200,000 unit.

Senator HARKIN. Did we put that number in there?

Mr. BUNTING. I think so.

Senator BOREN. I do not think the number was in there.

Senator HARKIN. That number was not in there as a definition of a family-size unit.

Mr. BUNTING. When FmHA can—when the county committee can divide up suitable property. It said if its former owner did not get the property it could be divided up into family-size units of $200,000 units. Limited resource rates is what it said, which is $200,000. You know, that is what it was for, was limited resource rates which is a $200,000 limit. That is the only thing I saw as dangerous in that provision.

It looked like Congress might be establishing for FmHA, which is a dangerous precedent, what a family farm size unit is, a $200,000 unit.

Senator BOREN. That was not the intent.

Mr. BUNTING. I do not think that was the intent, but, you know, that was the only dangerous part.

Senator BOREN. We will turn to Mr. Voth and then Mr. Schieber. Let me say that I do plan, after we analyze the testimony, to circulate that what has been given and testimony that we will have entered into the record, to circulate among the members of the committee a letter to the Farmers Home Administration in which we specifically point to either implementation problems or areas of the regulation.

The testimony here has shown either the regulations or the practice of the regulations to be inconsistent with our intent in writing the law, and then urge them to respond to us by making those changes.

Then if they do not make those changes we will pursue them further. So that is what we will be doing. We will have staff analyzing, along with us, the testimony that we have heard, try to make a comprehensive list of implementation problems and regulation problems that need to be addressed, and then we will circulate this for members of the committee to sign and make sure that both the new Secretary of Agriculture, when his confirmation is completed,

and the director of the Farmers Home Administration have this document, and require their response to it.

Senator HARKIN. Thank you. Mr. Chairman, I also have to leave soon. Again, I want to say publicly, for the record, as I have said to you privately, thank you so much for your leadership in these matters.

Your initial leadership, your getting the bill through, and now riding herd on it, and making sure FmHA is doing it right—you have just been wonderful.

Senator BOREN. Well, I appreciate you saying that, and I appreciate all the help you gave us in writing it, and I think all of us on the committee—obviously, I do not think a subcommittee has ever invested as much time in writing a piece of legislation or had as much involvement with the members themselves in writing a piece of legislation, as was the case with this law.

But that is only half the job. Unfortunately as we have found time and time again, the other half of the job is to make sure that the law has been implemented as we wrote it, and our work will have been to no avail if the implementation of the act then goes totally contrary to what was intended by Congress when we wrote it.

We know there are going to be some imperfections in it, there will be some corrections that will need to be made, but unfortunately it appears that what is happening in terms of implementation is not largely due to defects in the law but due to defects in the spirit in which the provisions are being administered.

So we intend to continue to ride herd on it, and I think every member of the committee has that resolve, indeed every member of the full Agriculture Committee is resolved to do exactly that, and I appreciate your comments and participation.

Senator HARKIN. Thank you.

Senator BOREN. Senator Gorton, we are glad to have you join us also in these hearings on this important subject.

Senator GORTON. Thank you, Mr. Chairman.

Senator BOREN. Mr. Voth.

STATEMENT OF RONALD E. VOTH, FARMER, FAIRVIEW, OK

Mr. VOTH. Mr. Chairman, and members of this committee, I just want to tell you how much I appreciate the opportunity to come and share with you what we see as happening out in the country with the loan restructuring procedures of the Farmers Home Administration.

We have talked a lot about the 45-day response and I am going to summarize, cut mine fairly short here, and open myself up for a lot of questions.

We have been talking a lot about the 45-day response time which has been a terrific burden on farmers in the time period in which it came.

Most of us, as we were trying to enjoy Christmas and Thanksgiving, were at the same trying to find out how to fill out these forms.

We found this to be very intimidating by the amount of records that were demanded. First of all, when you received the packet, that just made you want to throw it away to begin with.

The second thing is, that, given the understanding of what was provided you did not know how it would be used. There was a big question in my mind and there, of course this last thing is that you literally knew that many farmers were placing their future in the hands of somebody, but you did not know if you had any control over it.

Because of this, regrettably a lot of people did not respond, and I think that was a lot of the reason for it. But I responded, and in our area the response has been very good.

To this point, I think most people intend to respond, and most people want to work these things out like the law has provided for, and they intend to abide by the law and to work with FmHA, and that is my intention, too.

But I found in recent weeks, as I was one of the first ones to be called back in to my local office, and to now draw a new farm and home plan. There are some things I am going to bring up here that we have not touched on at all, that probably you will even want other hearings on because you are going to get a barrage of it.

Let me say when I drew up my farm and home plan, I had a good set of records. I am a member of the Northwest Farm Management Association and we have a good set of records, and we knew how we could make this plan work.

But then, I find out that I did not understand the DALR$ program and I did not have a copy of it, and I was going to have a problem.

But I found out where I could run mine on a DALR$ program, and——

Senator BOREN. Would they not give you a copy of the analysis on it?

Mr. VOTH. No.

Senator BOREN. They did not?

Mr. VOTH. No, they did not give me a copy of that. We did not have an advantage of running ours in their program. Only FmHA has the program. So we are playing a game where we do not know the rules to the game, and we are trying to figure out how to play the game.

Well, I found a copy, or I had the availability to run my farm and home plan in the DALR$ program, and I had a workable plan worked out. I went into FmHA last Thursday, it was 9:30 in the morning. He had set up I think about an hour and a half, that he thought that he could get this all worked out.

Well, I saw right away that an hour and a half was not even going to get us started because he was entering into a computer like this, you know, and it was going to take 2 hours just to enter it in a computer.

And let me say, I get along fine with my supervisor. We have no problem at all. OK. When we got down to the end of it, and of course he changed my plan, and you are going to find many farmers, when they come in, their plan will be changed considerably. Because you did not know exactly the rules; the way they were going to play the game.

I had run mine on the DALR$ and I knew how I could restructure, and this thing was going to work. We had come down to the end and I find out that because I did not know things such as the

present value of payments—and in their own rules here, here are some things that farmers have to deal with that nobody, even they do not understand here.

The regs say, "The value of the restructured debt will be based upon the present value of payments the borrower would make to FmHA using any combination of primary loan-servicing programs that will provide a feasible plan."

First of all, farmers do not understand the present-value concept.

The second thing is: What is a feasible plan? I presented what I thought was a feasible plan. He said no, it will not quite service all that we are going to do here, but gave me no indication of how we could come up with a feasible plan.

He immediately says, Ron, this will have to go into net recovery buyout. At that point I said, no, sir, I am not going to be sold out for just a few dollars.

So we called the dogs, this whole thing is off till another meeting, and my point is, this DALR$ program is a great idea but it leaves out the human element.

You can put numbers in. It is great to design this building, but it is pretty hard to design the intents and the purposes of your heart, and my desire, and what I am going to do in my farming operation.

Some other problems is the confusion of the forms. One time you go in——

Senator BOREN. Now you heard the Acting Director say that they provided this DALR$ program and their analysis of it. Did they do that?

Mr. VOTH. They will give you—the analysis, a summary and I have one, a summary that tells you absolutely nothing as to how anything was arrived at in the analysis. It gives you a summary statement of the analysis.

You have no idea, about all of the parameters that were used in arriving at this figure.

Senator BOREN. They have not made public how the program operates?

Mr. VOTH. No, sir. They sure have not. You know, another thing is that they have done and that is nobody has commented that we have filled out farmer and home plans before, this is not the same farmer and home plan that we filled out before.

A good example——

Senator BOREN. This had to be done within the 45 days?

Mr. VOTH. That is right. This new farm and home plan separated accrued interest and accrued principal which confused everybody, including your own accountant in how it was treated, and many farmers, you will find, have included—mistakenly—accrued principal and not deducted it from their liabilities. And they are going to get a double-whammy on both sides.

There is more and we talk about a feasible plan. They told you to produce a farm and home plan but, they do not explain how to get one. What they tell you to do is just produce one, and I think that is some of the main things I wanted to point out in my testimony.

I have a prepared statement but I have foregone it. I am telling you exactly what I have experienced.

Senator BOREN. We will take all your statements and put them in the record.

[The prepared statement of Mr. Voth follows:]

STATEMENT OF RONALD E. VOTH
FAIRVIEW, OKLAHOMA
JANUARY 24, 1989

Mr. Chairman and members of the Committee, I appreciate this opportunity to discuss the current Farmers Home Administration loan servicing procedures, how they are working, and how they could be improved.

I, along with my wife and three daughters, operate a commercial farm and ranch operation in Northwest Oklahoma, annually producing 1500 acres of wheat and 800 to 1000 head of feeder cattle. As a borrower of FmHA, I am sharing my thoughts and observations from that perspective. My comments will not try to explain how and why borrowers of FmHA got into their financial dilemma. All of us know what high interest, high inflation, low commodity prices, and erratic weather did to many farmers, mostly things they had no control over.

Loan-servicing programs by FmHA were part of the 1987 Farm Credit Act. As a part of loan servicing, all delinquent borrowers were to be notified by FmHA of these servicing programs. We as borrowers had 45 days to respond to these notices. These notices were received between last Thanksgiving and Christmas, a time when we were to be giving thanks, and enjoying these holidays as everyone else. Instead, all farmers who received these notices were: 1.) intimidated by the amount of records demanded; 2.) given little understanding as how the provided information would be used; and were 3.) literally placing their farming future in the hands of the local FmHA Supervisor, and/or a multimillion dollar computer program. Consequently, responses to these notices have been extremely low. This is regrettable, as many farmers' futures are at stake. Another waive of notices will be mailed in the near future.

All these procedures have not, in my opinion, followed the intent of Congress or the 1987 Farm Credit Act. Common sense, realistic expectations, fair treatment, borrower rights, good faith actions, and reasonable timeliness are needed for this procedure to work for both the borrower and the lender.

The intent of Congress, as we borrowers understood, was to keep as many borrowers on the farm as possible at the least cost to the government. Mr. Hertzler of FmHA said recently, "The Congress has very clearly set forth a public policy that requires FmHA to keep every FmHA farmer-borrower on the farm that it possibly can". Will this be done? My experience this past week raises some big questions as to FmHA's intent in Washington, and what the supervisors at the county level are actually doing.

FmHA's policy makes this statement: "The County Supervisor will use an FmHA computer program (DALR$) to <u>assist</u> in identifying, combining, and documenting the loan servicing programs that will keep the farmer on the farm and provide the best net recovery to the government". This (DALR$) program is, by recent experience, making the final judgment and determination for loan servicing. The personal consideration of each farmer's circumstance, past history, commitment to a successful financial recovery, financial and production management capability, and how the farmer got into this position is definitely <u>lost</u> in this computer analysis. Again, FmHA's own policy states that the (DALRS$) program is to <u>assist</u>, not to be the only judge and jury. Where does personal care, compassionate

understanding, and willingness of human risk play a part in this program? I have found these programs to be cold-hearted and very intimidating. Also, if Mr. FmHA Borrower doesn't understand how the (DALR$) program works or what won't work, he can be assured that his farming future is possibly over.

Between County Supervisors and State Supervisors, we are finding vast differences in what they are requiring for debt servicing and how they interpret the Policy. This needs immediate attention. My experience this last week with FmHA led me to believe that the FmHA in my locality is perhaps looking for ways to liquidate rather than to find ways to insure the continuation of the farmer-borrower. FmHA's own policy states that a feasible plan is a plan based upon the borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for an applicant to at least be able to: a.) pay all projected operation expenses; b.) meet scheduled payments on all debts except FmHA; c.) provide living expenses for the family members of an individual borrower.

My point here is that these are only projections based on one's best knowledge and intentions, all in an uncertain and unpredictable world. There is risk involved by both the FmHA and the farmer. My experience has shown, definite inflexibility, lack of understanding, and unwillingness to risk on the part of FmHA. This attitude needs correction.

Many farmers who are behind in their payments to FmHA should be saved at about any cost. There are other FmHA borrowers who would be best served by moving to other occupations. No doubt, everybody cannot be saved, but a sincere, personal, and honest attempt, with the borrowers' best interest at heart, is <u>a must</u> on the part of FmHA.

I was called back last week to enter my Farm and Home Plan into the (DALR$) program. It was my impression that a concerted effort was being made to keep me from qualifying for FmHA loan servicing. During this effort, I found very little understanding by FmHA personnel of the price protection offered through a future and option contract. How can FmHA administer a program when they themselves don't understand marketing opportunities?

The possible tax consequences associated with any principle or intrest write-down or deferral needs immediate clarification by I.R.S. What will happen to the basis in real estate after a write-off is given to a solvent borrower? Will borrowers find that their tax bill will eventually put them out of business? Will FmHA report concessions to I.R.S. on a 1099? Uniform disclosure forms were rquired without farmers realizing what they signed. What was the purpose of this?

In summary, President Bush's goal of a kinder and gentler nation could be a new goal for FmHA. As we read and hear almost daily, the taxpayer may perhaps pick up the tab on the defunct savings and loans, up to 90 billion dollars. Certainly farmer-borrowers of FmHA could expect fair and equitable treatment on their loans. Potential losses by FmHA is estimated to be $6.5 to $9 billion. Admittingly, the savings and loans write-off is a big pill for farmers to swallow, when, in comparison, farmers are treated unjustly.

Finally, let me assure you that we as farmers want to work these loans out, and work together with all lenders, including FmHA. No computer program can be substituted for open dialogue between lender and borrower when they are both working for a win-win situation.

Mr. VOTH. And I would be glad to answer any questions because I have gone the one step further than what we are talking about, to the first meeting with FmHA, and I am very concerned——

Senator BOREN. Are they going to allow you more time to revise the plan?

Mr. VOTH. He was not going to. He was going to, at that point——

Senator BOREN. So right then you are in the reservation section, not in the other section.

Mr. VOTH. That is it, and I pointed out to him, I said, well, that is fine. I think it would be to your advantage and to mine if you would mediate with me right here and now rather than go to mediation, because when you go there I have other lenders that I can assure you are behind me and are current. And you will have a lot more difficult time with them than it is right here. We tried to decide something right there. And he was willing to get me the information and come back.

Senator BOREN. But you might well be dealing with someone that would not be.

Mr. VOTH. That is right.

Senator BOREN. That is the problem.

Mr. VOTH. What concerns me, gentlemen, is what a lot of other farmers are going to be faced with when they go back in, not knowing the rules of the game. Now we are talking about a new ball game with different rules. I would be glad to answer any questions.

Senator BOREN. I hear you. Don Schieber.

STATEMENT OF DON M. SCHIEBER, FARMER, PONCA CITY, OK

Mr. SCHIEBER. Well, that is basically—you know—he has been a little further down through the program than I have at this point, so I may not be able to add as much as he has.

One thing that I would like to point out in my testimony is—and I ask that my written testimony be entered into the record.

Senator BOREN. It will be put in the record.

[The prepared statement of Mr. Schieber follows:]

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STATEMENT OF DON M. SCHIEBER
PONCA CITY, OKLAHOMA
JANUARY 24, 1989

Mr. Chairman, Members of the Committee, I appreciate this opportunity to discuss FmHA and their delinquency notices.

I would like to begin by building a little bit of background. With my wife and 4 daughters, I operate about 1000 acres of wheat land in North Central Oklahoma along with a seed processing business. I also produce wheat for seed when possible. My wife is a dietitian and is self-employed with her business to provide family living expenses.

When we look back to try to see what has caused farmers to become delinquent with FmHA loans, we must consider low commodity prices, high interest and crop failures. Most loans that are delinquent are economic emergency loans. Many of these loans were doomed from day 1 because of the way they were structured in the first place. Ones I am familiar with, were scheduled over 7 years and could be rescheduled to 15 years. The first payment during the 7 years was about 1/2 the principle. It isn't hard to get behind in a situation like this, especially when you throw in a flood, drought, or other crop failure.

We need to look at solutions. FmHA has developed this delinquency notice packet which cost you and me about $344,000 to mail out to scare farmers during the holiday season. The media has not helped much either by calling these things "Foreclosure Notices". They are foreclosure notices only when all the other options fail. The other options include lower interest, reamortized payment schedule, payment deferral, debt writedown, and net recovery buyout.

These other options are discovered by the computer program DALR$ FmHA has developed for these services. Depending on what information can be generated by the farmer, the computer will control the destiny of the farm. A machine will decide whether I farm or not. A machine that cannot account for the weather factor or all the other variables associated with farming will take the duty of saying whether I remain in business away from the human factor setting across the desk. We have been given instructions on how to fill out the forms but have been given no instructions whatsoever on how to construct a feasible Farm and Home Plan.

Another variable to consider is the attitude of the FmHA employee working your case. How much does he know about agriculture and how it works. Is he experienced or is he green out of college. Does he have a genuine interest in carrying out the intent of the law and being fair or is this just something else someone threw at him to do. What this individual does will determine who farms and who does not.

If a farmer qualifies for debt write down, this must be done by the State Director. Will he do this

himself or will he designate someone? It would be simpler to allow the County or District people to do this.

When we look at mediation, there are several things that come to mind. The first thing is that mediation is a form of denial. What will happen when a farmer is told that mediation will be called for? What are they actually saying? Are they saying the plan that has been developed won't work and they want to talk to other creditors to try to work something out? What if other creditors don't come to mediation. What I see in this case is that the packet is then put into net recovery value buyout. This is a denial. In some cases the net recovery buyout will be a very good option, but in others, there will not be much hope because the net recovery buyout will be too high to obtain other credit to pay it off.

If you can get a good settlement with FmHA and can find the credit to pay off net recovery value, what happens when you figure taxes? Will there be a tax liability? What does IRS say about these write downs? If they have not said anything about how they will treat these, can you give them some guidance? Will there be a tax liability of any kind on a deferral?

Another thing that comes to mind about mediation, will borrowers be given the specific reasons that resulted in the failure to find a feasible plan through DALR$, and secondly, will the mediation process place a stay on the National Appeals time requirements? Most borrowers probably have never heard of the National Appeals process. Borrowers should be notified of these options in any communication by FmHA advising them that a feasible plan cannot be found.

FmHA instructions require borrowers to base Farm and Home Plans on five years of production history. These rules do not require documentation of five years production records within the 45 days. Many Oklahoma farmers are being told by local offices that they must submit documented evidence of the past five years of production history, while others are being told that as long as the borrowers projections are consistent with production histories, no documentation will be required. FmHA is required by its own regulations to conduct a year end analysis of each borrower's file every year. This analysis may be used by the county offices to determine if the borrowers projections are reasonable.

I am not proud of the fact that I was sent a loan servicing packet, I did not ask for it, but I am going to do the best that I can to see that the information we use to determine what will happen in my case is as accurate as can be. It is hard to tell what will happen to farmers thru this new approach to debt settlement because none that I know of have been finalized yet. Most have just returned their packet

and have not had the second meeting to remake the Farm and Home Plan. Farmers everywhere have questions about these packets even after they returned them. Who has the answers? It is difficult to answer questions by machine and man when the success or failure of the farm depends on so many variable factors.

I want to tell you about some of the people that work in the county offices. One individual that I have become acquainted with has charge over two counties in Oklahoma. He has two assistants in each county. He splits his time each week, two days each and floats the fifth day. He is about the third or fourth largest lender in this two county area. Here we have five people expected to handle a 45-50 million dollar loan portfolio. You see mounds of paperwork stacked everywhere when you walk in. I was told there so many reports to fill out requested by some higher office that it is hard to do anything. I know of another county supervisor that is so dedicated to his work that he uses his vacation time locked in his office to catch up on his paperwork. There is another county supervisor that I know of that has said no farmer in my county should qualify for any restructure or debt write down. These kind of public employees should be sought and fired. The other dedicated people should be granted salary increases and sent help.

Thank you for your attention. I will be happy to answer your questions.

Mr. SCHIEBER. We need to look back and see what has caused farmers to get into some of these problems. One of them is the real interest rate. We have floods. We had a 500-year flood in our county 2 years ago.

Senator BOREN. I remember.

Mr. SCHIEBER. And now we have drought. So there is a lot of different reasons why farmers get into these kinds of situations.

What kind of loans are in trouble? A lot of them in Oklahoma are the economic emergency loans. Now a lot of these loans were doomed from the day they were signed because of the way they were structured.

Most of them that I am familiar with had a 7-year repayment schedule. The first payment on that thing was half the principal. And then you could go the 7 years, and if you could not make that work they would restructure it to 15.

So it does not take too long to figure out that you are in trouble from year one. And then they look at solutions to that, so they came up with this packet.

This packet costs $4.15 to mail out, and the figures that I had were different from what I have in my testimony, but according to Mr. Johnson a while ago, the number that were mailed out has cost you and me $294,000, to mail these out.

Senator BOREN. These short, brief, simple forms?

Mr. SCHIEBER. Yes. I suppose they burn good, but I do not know how they can expect me, as a farmer—and I have two degrees from a college—to figure this kind of garbage out.

I received one of these packets. I am not very proud of that, but I am going to do everything I can to make that thing work.

I had my papers all filled out. I thought that they were correct, and I thought that, well, there's some people offering to help. So I am going to go look, and talk to these people and see what they say.

Boy, was I in for a surprise. I had to just completely start over. I did not know anything about what I was doing.

It took me a whole day to——

Senator BOREN. Have the seminars, and so on, been helpful, that are being held around or——

Mr. SCHIEBER. I did not get into any seminar.

Senator BOREN. You did not get to any of the seminars?

Mr. SCHIEBER. I had a teleconference that the university put on, and it was somewhat useful. They had transmission problems and we did not get to see but half of it.

But I have forgotten where I was. There was about 200 farmers that made themselves available to these programs, where they could get help to fill these things out. So there are a lot of them that did not get that.

And as a result of that, there is a lot of them going to go in—it is just like taking them to slaughter. That is what happening. And I have not been back for my second meeting yet, but, you know, I am just glad that I know a little bit more about what to expect.

But I can see right now that I would have been a whole lot better off if I had gone fishing instead of going to the post office.

Senator BOREN. If you had not claimed it and struggled to complete it, you are going to get another 45 days, according to what we just heard, if it never was delivered. If it had been refused——

Mr. SCHIEBER. Yes, and then we would have the knowledge of knowing what other people have gone through.

Senator BOREN. Well, that is the reason I feel very strongly, that the law said you had to sign a letter saying I hereby request an opportunity to participate in the loan program, and to go through this review process.

It did not say you had to have all these forms completed in that time, and I think that is the reason it is so important that—that is what the law said—that is what we intended because we realized it was going to take a lot of counseling back and forth, and work-through.

The DALR$ programming itself was delayed in being made available to the public. That caused some extra problems. It is complicated. It cannot be run on a lot of home computers. You simply cannot run that program on a lot of home computers. You have to have more help with it. So just all sorts of things.

I am told that the regs included a worksheet for arriving at these DARL$ figures by hand, but that you have to have such things as T-Bill rate present values, and that sort of thing.

All I can say is I am glad that—I do not know how many members of this committee could have been able to fill it out, if we had been asked to fill it out, and that is not what we had in mind when we started this process.

Mr. SCHIEBER. It takes them about a half a day just to enter the stuff into the computer, and it takes the computer about 10 to 15 minutes to come up with the analysis.

Well, if you are in a situation where they throw you into net recovery buyout, then you have 30 days to come up with the cash. You know, if I could not make the payments before, what makes them think I am going to pay it now in 30 days?

You know, they are going to take you over. I think that if I have 30 days to do that, they ought to change that and give me 2 years, or set up some guidelines as to, if it costs you this much to take care of a net recovery buyout, they give you so much time, and you graduate it for a longer period of time, or something like that.

Senator BOREN. Right.

Mr. SCHIEBER. The DALR$ program, as I see it, that is one of the most analytical tools that I have ever seen as far as, you know, looking at my farming operation. But I do not know what they put in it to get those figures.

It takes 1,000 megabytes just to run the program, and that is a lot of bytes, and there are no home computers that I know of that stout.

Senator BOREN. No.

Mr. SCHIEBER. But what I see that that thing does: it takes the human element out of saying who is going to farm.

Senator BOREN. Yes, that is exactly right. That is the reason I said for them to say they have personnel sufficient to get all this done within 60 days, and enough help, yes, if you are going to use, automatically, the 15-minute printout from the computer and say that is the answer, we have analyzed it, sure.

But not if you are going to really go in and spend intensive human time in making these human evaluations that have to be made to have a fair evaluation of a system.

Mr. SCHIEBER. What they have done is they have taken the burden from the supervisor that you are working with, they put it on the computer, and now they say, well, the computer says you are out of business.

Senator BOREN. Right. I understand.

Mr. SCHIEBER. But I would like to talk a little bit about the people in the county offices, too.

My county supervisor is in charge of two counties. He has two staff people in each county. He divides his work week up, 2 days in each county, and floats the fifth day.

Senator BOREN. Right.

Mr. SCHIEBER. There are five people there. They are about the third-largest lender in the two-county area. They have five people servicing $45- to $50-million worth of loans.

I visited with him the other day and they closed the bank in Oklahoma because they had lost $1.5 million over the last 2 years. He kind of chuckled and said, well, sometimes I will lose that much in a day. You know. And here, we are expecting people to service these kind of loans with no help at all. I know another county supervisor that has made the statement that no farmer in my county should be granted any sort of a write-down.

I think we need to find people like that and fire them right on the spot. I mean, there is no call for that.

Senator BOREN. I agree with that.

Mr. SCHIEBER. That is not the intent of the law.

Senator BOREN. We have been fighting that. Of course it was one of the reasons that we had to undertake the full revision of the law, is we have been fighting those kinds of entrenched attitudes for so long.

That is the reason we tried to write this law in a way that would force the agency to do what it should have been doing for the last several years.

I mean, we should not be in a situation of trying to solve the backlog of problems here within a period of a few months. This should have been going on for years.

Think of the hundreds and millions of dollars that we could have saved, had there been restructuring and write-down a long time ago on a lot of these loans, had there not been these foreclosures, had we not gone through this whole process that we have gone through over the last several years.

I am going to have to stop in 3 or 4 minutes. I am going to let Senator Gorton ask a few questions if he has any.

Senator GORTON. No. I am just here for information.

Senator BOREN. All right. We understand you are going to be joining us on the committee, and we really welcome that. We have served together previously and we welcome you to the committee.

Mr. SCHIEBER. One other county supervisor that I know of has so much paperwork to do, that when he has vacation time coming and he gets so far behind in the paperwork, he will take vacation time and lock himself in his office and do his paperwork.

Senator BOREN. Sure. I know of a number of those situations.

Mr. SCHIEBER. He should not have to do that.

Senator BOREN. No; he should not. And you have some conscientious people who are trying to do it that way; you have some others that are not so conscientious. But the burden that is being placed right now is just excessive, and it could be helped if the agency—as I see this law—and we will be getting back to it—there is nothing in this law that says that they cannot give more than 45 days, or that they cannot—particularly, if you include not only just writing the letter saying I want to be a part of the system, I want the review—that within the 45 days, that certainly is accomplishable. Anyone could sit down and write a one-sentence letter and say I want to hereby certify I want to participate in the review process.

But getting all the paperwork done. If you extended the time, which there is nothing here that says they can't extend the time, it simply says they must request within 45 days. There is nothing that says they cannot give them another 45 days to complete the paperwork and work with the borrower in completing that paperwork.

Now in the process of doing that, and spending the time working—that does not then start till 60 days. In their discretion, they give more time to the borrower to work on completing the forms beyond the 45 days—let's say they give another 45 days.

It is only when that is completed, because they are doing that to be helpful to the borrowers—only when that is completed, that then the 60 days starts to run on the other side.

They would save themselves a great amount of burden and make the 60-day limit much more manageable on their side if they would go ahead and use their discretion to extend the time for completing the paperwork and work with the farmer in doing so.

It makes so much sense and it just does not make any sense that they have so far—we have just heard one little bit of movement this morning on this, those that did not pick up the letter—that it makes no sense for them not to extend the time.

And especially if somebody has put anything down on paper that indicates to them within 45 days, anything on paper that they have received is an indication to the borrower we want to be considered. That should be sufficient to toll the requirement of the 45 days. That is what the law says.

Then the agency should give whatever additional time it takes in a good-faith effort. Yes, if somebody is not cooperating and will not come to meetings, will not work on filling out the forms, that is something different.

I think none of us would say that you ought to go on with that person forever. But you are working with this farmer and the farmer still needs help, and is making an honest effort to get the forms filled out, understand, as Ron has said, just exactly what is being asked for in some of these questions.

So that if you have not answered in exactly the right way, you have a chance to rework it before they go through the computer analysis.

That, to me, just seems like it is so much more reasonable, and it will make it work for everybody, it will save everybody so much grief on down the line, and so many private lawsuits will not have to be brought, and so on.

Well, I appreciate all of you being here today. You have been helpful to us. I would tell you that I have had a discussion with Mr. Yeutter, the Secretary of Agriculture-designate about this matter.

I told him that this would be a matter that would be on his desk, undoubtedly from day one after his confirmation. He understands that. I have urged him to prepare himself to plunge right in. Of course he really does not have any power to do anything at this moment until he is confirmed.

But I have urged that even in this interim period, that attitudes be conveyed to those that are implementing the program during the transition period.

And it is one of the reasons that I regretted the notices going out when they did, because it is always our experience—it is hard enough around this town to get things handled properly when you are in the middle of an administration.

But when you are in a transition period people are occupying positions temporarily, or perhaps temporarily. They are even more afraid to do some of the things that need to be done to cut through and make sound decisions.

So it is a difficult period and I felt it was important, even though we do not have—we are only dealing with acting people in the Department, and I felt it was important for us to have the hearing anyway, for the very reason of us trying to then start this whole channel of communication back with the Administration and let them know the areas in which the committee feels there has to be change.

And I certainly am going to be pushing for them to use their discretion, as I see it, clear discretion within the law, to go beyond the 45 days with anybody.

In fact I am not so sure it is even discretionary. If the person has said, with a one-sentence answer, I hereby request a review, I am not sure it is not mandated to them to give the review.

At the very least they have the discretion to give additional time in working with these people. So we will be following through and let me assure you we will do an analysis of the full testimony of each of you and the exhibits you have brought, some of the case studies that you brought with you today.

Staff will help us analyze it. Chairman Leahy has indicated that he will follow through on this and I will continue to follow through.

We are actually operating as an unofficial subcommittee, as you know, at this point because our subcommittees have not even been restructured yet.

Some are still unofficial members even of the Agriculture Committee but expect to be members. We are unofficial ourselves at this moment in some ways, but I know that from the commitment that Chairman Leahy has given from the full committee as well, that whatever happens in the final makeup of this subcommittee, that we will proceed to follow it, we will proceed to follow it from the full committee, and we are not going to lose any time in our own transition on the committee from pressing ahead.

We will circulate the letter I mentioned, and I assure you that I will sit down with the new Secretary as well, and convey these feel-

ings to him, and we will do what we can to try to make it operate, even though, in theory, the 45 days have run out for many of the people that are affected.

We will continue to try to reopen it in those situations where it should be reopened.

So thank you all very much. We will stand in recess and we will continue to follow the oversight of this law very closely.

[Whereupon, at 12:35 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

EDITOR'S NOTE.—See S. Hrg. 100-965, Oversight on the Implementation of the Agricultural Credit Act of 1987, for further reference. Hearings were held on May 23, 1988, June 16, 1988, and September 30, 1988.

[Material submitted for inclusion in the record follows:]

Wildlife Management Institute

Suite 725, 1101 14th Street, N.W., Washington, D.C. 20005 • 202/371-1808

LAURENCE R. JAHN
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Vice-President
RICHARD E. McCABE
Secretary
DANIEL A. POOLE
Board Chairman

February 8, 1989

The Honorable David L. Boren
United States Senate
Washington, D.C. 20510

Dear Senator Boren:

The Wildlife Management Institute appreciates the opportunity to submit for the official hearing record of January 24, 1989 this statement on Farmers Home Administration implementation of the Agricultural Credit Act of 1987.

The Institute, a private nonprofit conservation organization staffed by wildlife professionals, has been dedicated to the restoration and improved management of natural resources since 1911.

The Agricultural Credit Act of 1987 provides for substantial revisions in loan servicing procedures of Farmers Home Administration (FmHA). The primary intent of the Act is to minimize farm loan losses to the government while allowing borrowers to continue farming. In promulgating its final rules for implementing the Agricultural Credit Act, FmHA accepted fiscal responsibility for developing loan servicing procedures that will net the greatest public benefit to taxpayers as well as farmers.

Congress has given FmHA a very attractive tool to assist farmers in resolving their delinquent debt problems. That tool is the conservation easement.

Section 1318 of the 1985 Food Security Act (P.L. 99-198), as amended by the Agricultural Credit Act of 1987 (P.L. 100-233), authorizes FmHA to cancel a portion of a delinquent borrower's debt in exchange for a conservation easement of 50 years or more on property securing the loan. To be eligible, the land must be a wetland, highly erodible, or have environmental significance. The amount of debt that can be cancelled for a conservation easement is the percent of land covered by the easement times either (1) the current market value of the entire farm property, or (2) the amount of FmHA debt in excess of the farm's market value, whichever is greater. Easements may be enforced by any local, state, or federal government agency or a private or public nonprofit organization designated by FmHA. These conservation easement provisions apply only to farm program loans closed prior to December 23, 1985.

Conservation easements are considered by FmHA along with loan rescheduling, reamortization, interest rate reduction and deferrals, and debt write-down as independent primary loan servicing options. Conservation easements also can be considered on top of debt write-down if combinations of all other primary loan service options fail to keep a farmer solvent and on the farm.

Farmers clearly benefit from conservation easements by reducing their delinquent debt loads and other costs associated with farming marginal lands. For example, in some instances where the value of secured farm property approaches or exceeds the amount of delinquent debt owned by a FmHA borrower (e.g., appreciated property near urban areas), the borrower may not qualify for debt write-down and a conservation easement might be the only option that allows the farmer to keep the land. In other instances where a FmHA borrower needs more debt relief than is offered by debt write-down, conservation easements may be used on top of a write-down to further reduce the borrower's delinquent debt. In addition, conservation easements have the clear advantage of being excluded from potential tax liabilities associated with debt write-down and other loan servicing options.

Taxpayers benefit from conservation easements because easements help build public assets rather than contribute to government deficits as do debt write-downs. Conservation easements are an important tool for maintaining and protecting wetlands and other wildlife habitat. Conservation easements can save taxpayers millions of dollars each year by reducing costs of soil erosion and improving water quality. Conservation easements also help prevent future loan losses by better protecting FmHA farm loan investments and reducing farmer debt loads to manageable levels.

In addition to the authority allowing farmers to exchange conservation easements for delinquent debt relief, FmHA has a legal mandate to place conservation easements on all FmHA inventory property with floodplains, wetlands and historic places before the property is resold, leased or transferred. The authority for these wetland and floodplain requirements derive from Executive Orders 11988 and 11990, and Section 1314 of the 1985 Food Security Act. Authority for historic preservation easement derive from the National Historic Preservation Act and Executive Order 11593. Authority for conservation easements to protect other federally recognized resources (such as endangered species) derives from the National Environmental Policy Act and the Endangered Species Act.

In some circumstances FmHA can assist farm borrowers by establishing a conservation easement on qualified inventory lands and thereby reduce the land's cost during resale. In addition, conservation easements on FmHA inventory lands help farmers by discouraging those who only speculate in agricultural land values from purchasing inventory property.

Under the authority of the Agricultural Credit Act of 1987, if none of the primary loan servicing options, including debt write-down with a conservation easement, can restore borrower solvency, secured property is acquired by FmHA, held in inventory and sold/leased back to the previous owner under preservation loan service provisions. These loan preservation provisions are implemented only when all previous loan servicing tools fail to bring a borrower to solvency, or

when a borrower has failed to respond to FmHA notifications of his/her options under the loan servicing program. Reports indicate that more than 40,000 delinquent FmHA borrowers will be affected by loan preservation provisions of the Agricultural Credit Act.

If a parcel of land is offered back to a FmHA borrower under leaseback/buyback provisions of the loan preservation program and that property contains wetlands, floodplains or other features affected by federal mandates, a conservation easement must be placed on the property before final conveyance according to FmHA regulations. The borrower also must certify compliance with sodbuster, swampbuster and conservation compliance provisions of the 1985 Food Security Act to be eligible for the loan preservation program.

In order to avoid any potential misunderstandings, the Institute recommends that FmHA increase its efforts to notify farm borrowers eligible for loan preservation programs of potential environmental requirements, in the context of a conservation easement and/or compliance certificate, that may affect these farms. The Institute also recommends strongly that FmHA give highest priority to expanded use of conservation easements when helping farmers restructure loans to avoid foreclosures under loan servicing provisions of the Agricultural Credit Act.

The Institute appreciates the opportunity to provide these remarks and would be pleased to respond to the subcommittee regarding additional opportunities to improve upon these important FmHA farm/conservation programs to achieve multiple public benefits.

Sincerely,

L. R. Jahn

Laurence R. Jahn
President

Attachment

IRJ:dt

CC: Honorable Rudy Boschwitz
Honorable Thad Cochran
Honorable Thomas Daschle
Honorable Tom Harkin
Clayton Yeutter
Neil Johnson
Frank Dunkle

Table 1. Summary of Farmers Home Administration's Loan Portfolio (3/31/88).

STATE	FARM OWNERSHIP (FO) LOANS		DELINQUENT (FO) LOANS	
	NUMBER OF BORROWERS	UNPAID PRINCIPAL ($1000)	NUMBER OF BORROWERS	UNPAID PRINCIPAL ($1000)
Alabama	2,720	113,625	631	36,030
Alaska	7	504	2	304
Arizona	459	46,576	197	23,387
Arkansas	4,670	232,922	1,373	92,846
California	1,245	129,291	498	55,874
Colorado	1,271	97,223	452	41,424
Connecticut	157	13,044	26	2,645
Delaware	214	15,262	33	2,582
Florida	1,123	66,593	474	33,671
Georgia	2,464	161,725	974	75,242
Hawaii	232	26,536	91	14,095
Idaho	2,461	186,568	1,092	101,214
Illinois	4,041	292,850	1,005	86,816
Indiana	3,049	248,915	1,066	106,515
Iowa	4,896	371,526	1,220	112,400
Kansas	4,554	247,599	1,147	80,070
Kentucky	4,483	252,909	1,123	87,165
Louisiana	1,708	124,769	863	75,824
Maine	1,156	58,576	318	19,189
Maryland	569	42,563	146	12,885
Massachusetts	248	22,149	51	4,451
Michigan	2,218	160,132	848	68,650
Minnesota	4,604	303,948	1,859	145,062
Mississippi	4,582	191,090	1,647	95,675
Missouri	6,141	358,128	1,838	131,291
Montana	1,543	137,402	518	53,975
Nebraska	4,487	291,359	1,185	90,457
Nevada	128	11,543	71	6,979
New Hampshire	84	6,345	7	696
New Jersey	345	25,068	119	9,601
New Mexico	823	58,490	231	22,142
New York	2,515	140,974	759	50,054
North Carolina	4,073	198,594	1,041	64,710
North Dakota	4,664	304,012	1,678	129,821
Ohio	1,872	175,182	649	68,350
Oklahoma	5,207	292,963	1,840	134,777
Oregon	1,135	97,684	382	41,447
Pennsylvania	1,500	127,658	274	25,214
Rhode Island	32	2,800	10	941
South Carolina	1,759	88,123	593	39,340
South Dakota	5,298	295,980	1,426	97,537
Tennessee	4,329	213,057	1,272	86,658
Texas	5,248	322,051	1,619	132,468
Utah	802	52,737	182	17,318
Vermont	589	45,249	58	5,890
Virginia	1,536	85,043	448	29,992
Washington	1,340	116,786	428	45,592
West Virginia	1,034	47,707	206	13,254
Wisconsin	3,787	266,852	1,180	92,514
Wyoming	518	43,403	159	17,494
National	115,780	7,294,730	36,010	2,823,104

AG-LINK Coalition
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AG-LINK Hotline: 1-800-AG8-LINK
(1-800-248-5465)

MEMORANDUM

TO: Janie Hipp, Assistant Attorney General

FROM: Ron Johnson, Research Analyst, Ag-Link Coalition

SUBJECT: Overview of the FmHA Restructuring Process in Oklahoma.

DATE: January 20, 1989

HISTORICAL REVIEW

The past two years of Oklahoma history will most likely be written and remembered as a major turning point for farmers, ranchers, lenders, and all other entities associated with agriculture. For two years the Farmers Home Administration, Oklahoma's largest Agriculture lender, has been under Federal litigation that ultimately led to a court order causing FmHA to cease collection procedures in 1986. During this two year legal phase, FmHA spent millions of dollars developing new systems engineered to resolve major delinquency problems among its borrowers. Estimates indicate that nearly two-thirds of FmHA's loans are distressed and/or delinquent. During this time frame borrowers experienced major difficulties in obtaining yearly operating loans from FmHA. FmHA's decision making process was brought to a near stand still. The ultimate test for FmHA was to design a program to assist its borrowers in overcoming their delinquencies while simultaneously costing the U.S. Government no more than it would incur through foreclosure.

With the assistance of Congress, Farm Organizations, and almost one year of debate, the Agricultural Credit Act of 1987 was formulated, passed into law on January 6, 1988, and published into interim regulations by FmHA on September 14, 1988. Although the September 14,

1988 regulations are not final FmHA has taken the position that they are effective. On or about November 22, 1988, FmHA began sending its delinquent borrowers restructuring notices. In effect, these notices, a packet of forms and instructions, were intended to give FmHA borrowers the necessary means of providing FmHA with financial information. This financial information is used by FmHA decision makers to determine if borrowers qualify for restructuring through their computer program called DALR$. FmHA allows its borrowers 45 days to complete and submit the packet forms as per instructions contained in the packet. Unfortunately, the instructions do not provide information to borrowers that explain what criteria must be used in order to pass the DALR$ computer test. The following information is provided to you in hopes that your early detection of problems connected with this process will result in avoiding costly mistakes to the government and its borrowers.

STATUS QUO OF DELINQUENT FmHA BORROWERS IN OKLAHOMA.

During FmHA's past two years of internal restructuring many FmHA borrowers have experienced adverse effects from FmHA's inefficient supervision, unwillingness to make loans, and refusal to make decisions. Several problems have occurred as a direct result of the past two years of FmHA's lack of organization. The most significant, and consequent change affecting the status quo has been the gradual liquidation of livestock inventories, and depletion of cropland fertility because of FmHA's advise to farmers to cut back. Although these inventory reductions have provided farmers with short term cash-flow benefits, two years down the road now reveals significant adversities in trying to

restructure under the new FmHA rules. For example, FmHA, through its unwillingness to advance operating loans to delinquent borrowers, has forced Oklahoma farmers to scale down their crop and livestock production. Although this reduction in their operations has provided farmers with short term cash to replace normal FmHA operating loans, it has had the long term effect of making them ineligible for restructuring under the new rules. Today these farmers are facing inadequate cash flows to service the next five years of FmHA restructured payments. Another common example has occurred when farmers have been advised by FmHA supervisors to reduce crop inputs. Reducing fertilizer, for example, has resulted in the depletion of nutrients that will require several years of high investment to replenish. This investment will be required to restore production levels that will service FmHA's restructured debts. The results of compliance with these requirements are beginning to surface in the form of denials of restructuring from FmHA for reasons of insufficient cash flows.

The solution to these problems is provided in the new FmHA regulations.[1] Unfortunately, FmHA's instruction packet makes no mention of the availability of these loans, nor are County Supervisors apprising borrowers of these new provisions. The good news is that many of these borrowers now have additional income from off-farm jobs etc. that could be coupled with a minimum operating loan, and result in the FmHA's full recovery of debt, and the farmers staying in business.

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[1]. 7 C.F.R. 1941.14 "Loans to Delinquent Borrowers"

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Another common situation exist among borrowers who have been unable to operate their farms, and have had no means to put in crops or purchase livestock because of FmHA's refusal to advance operating loans. In effect, these farms have lay idle for two years. These operations should be able to re-start under the new FmHA restructuring procedures with minimum operating loans. However, these farmers will most likely encounter high inputs in the first year, coupled with low outputs because of having the land lay fallow. Equipment will generally be inoperative after a long period of setting idle. These problems must be recognized by FmHA. Limited resource loans, and longer deferral periods must be incorporated into these operations. In comparison to farms that have continued in operation, these farms and equipment will liquidate at a significantly lower recovery value.

Finally, most FmHA County Supervisors in Oklahoma have taken the responsibility for filling out the Farm and Home PLan for farmers for the past several years. In fact, most Farm and Home Plans submitted by farmers have been discarded by the County Supervisors, and replaced with the Supervisor's own version of the Farm and Home Plan. Although this would seem to provide farmers with additional help, it has had the effect of farmers becoming totally dependent upon the County Supervisors for filling out these plans. It has also given many borrowers the feeling of being monopolized instead of supervised. One solution to this problem may be for FmHA to initiate a program to train farmers on how to fill out the new Farm and Home Plan.

THE NEW FARM AND HOME PLAN

FmHA has developed a new Farm and Home Plan as a product of the new restructuring program. The new form, 431-2, included in the notice packet, is based on several new concepts and theories. Among the most significant changes is the separation of accrued principal and interest that borrowers must compute from their own records. Very few people have been effectively trained to fill out this section. The common tendency is to mistakenly list the accrued principle and fail to reduce that same amount from the total liabilities section. Again, there are no instructions on how to properly fill this form out.

Another common problem is that in the past FmHA supervisors have encouraged farmers to go for maximum production and maximum cash flow. The new Farm and Home Plan, however, should reflect a more realistic, if not a conservative approach to production and cash flow levels. For example, supervisors have tried to maximize line 16 in section J over the past years. Under the new rules if line 16 is greater than the total debt repayment in section K, the farmer will not qualify for restructuring. This is in direct contrast to the traditional approach in that previously if line 16 was less than the total debt repayment in section K, farmers would not qualify for FmHA services and may be denied FmHA services.[2] In fact, if this occurs farmers may be ask to graduate, and eventually have their loans accelerated. Oklahoma currently has a farmer who falls under this rule.

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[2]. FmHA form 431-2, attached.

Another major problem is that FmHA supervisors have traditionally listed farm assets at inflated values. These inflated values have helped farmers qualify for operating loans. In contrast, under the new criteria, if farmers use these same inflated values, there are present value computations in the DALR$ computer program that may cause the farmer to be disqualified for FmHA servicing, and result in the acceleration of his/her loan. Again there are no instructions in the FmHA packet that explain this change in approach.

A possible solution to these and many other problems associated with filling out the Farm and Home Plan may be for FmHA to contract with groups like Ag-Link to present comprehensive training programs to FmHA borrowers.

FmHA PROVIDES NO INFORMATIONAL TRAINING IN PACKET

Although FmHA defines what a feasible restructuring plan is[3] it does not explain how to produce one. Just as it would be virtually impossible for a non-farmer to produce an Oklahoma wheat crop combined with an integrated stocker operation without explicit training and assistance, it is virtually impossible for a farmer to know how to produce a feasible plan that will fit the DALR$ criteria without explicit training and assistance. For example, FmHA instructions require that borrowers must prove they can cash flow a restructured loan that has a present value at least as much as the net recovery value.[4] For FmHA decision makers to be

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[3]. 7 C.F.R. Section 1924.57 (53 Fed Reg 35680-35681 Sept 14, 1988).

[4]. 7 C.F.R. Section 1951, Subpart S

able to make this determination FmHA has spent millions of dollars on the development of the DALR$ computer program, that in effect makes the determination. It is unreasonable to expect borrowers to submit plans that will pass this criteria without the same information, training, and support tools as decision makers have available.

Proper training, of course, would be the preferred solution to this problem. However, since the 45 day period has ended in Oklahoma for most borrowers, FmHA should instruct the local decision makers to run borrower's information through the DALR$ computer program, and advise the borrower of any short falls that would cause his/her plan to be disqualified. **THE SPECIFIC REASONS THAT THE PLAN DID NOT MEET THE DALR$ CRITERIA SHOULD BE GIVEN TO THE BORROWER, AND SPECIFIC AREAS OF DEFICIENCIES SHOULD BE POINTED OUT TO THE BORROWER.** These steps should be taken before any official or unofficial denial decision is made. The borrower should be provided with a print out of the complete DALR$ analysis during this phase.

SPECIFIC REASONS THAT THE DALR$ COMPUTER PROGRAM CAN'T FIND A FEASIBLE PLAN SHOULD BE PROVIDED TO BORROWERS BEFORE FmHA TAKES ANY ACTION

Once a borrower's information is submitted to FmHA much of it will be automatically processed through the FmHA computer program called DALR$. This program will not run on personal computers. Therefore, borrowers nor their financial representatives will have any way to analyze the Farm and Home Plan prior to submitting it to FmHA. For this reason FmHA decision makers should be instructed to provide a complete analysis of DALR$ for those borrowers who's information did not result

in a feasible plan.

This analysis, complete with specific reasons for the DALR$ denial, should be presented to borrowers immediately after FmHA's initial DALR$ input, and before FmHA takes any action of denial (formal or informal). This approach will assist in building a bridge of trust and confidence from borrowers, and demonstrate FmHA's willingness to give borrowers and their representatives complete access to the DALR$ program even though it will not run on personal computers. In analyzing several plans we have discovered that many times a small change in the borrowers operation on the front end of the plan can make the difference between acceptance or denial of the DALR$ decision. Providing the borrower with the results of running the initial DALR$ program will result in minor changes in several instances that can save FmHA, and borrowers immeasurable expense and time. FmHA MUST REALIZE THAT THE COMPUTER PROGRAM CALLED DALR$ HAS THE CAPABILITY OF MAKING DECISIONS ON ITS OWN THAT COULD ULTIMATELY DETERMINE THE FATE OF THE BORROWER. PROCESSING INFORMATION IN THIS FASHION IS SIMPLY NOT ACCEPTABLE. As FmHA regulations specify, DALR$ is merely intended to be a support tool for real people to assist borrowers in finding a feasible plan.[5]

BORROWERS REFERRED TO MEDIATION BY FmHA SHOULD BE
GIVEN SAME INFORMATION AS THEY WOULD RECEIVE IN APPEALS

FmHA has agreed to refer borrowers to mediation when DALR$ can not find a feasible plan. Using mediation in such instances could be most beneficial to borrowers. However, two important issues should be

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[5]. (53 Fed. Reg. 35754, Exhibit J, Sept. 14, 1988)

resolved by FmHA before advising borrowers to participate in mediation. First, will borrowers be given the specific reasons that resulted in the failure to find a feasible plan through DALR$, and secondly will the mediation process place a stay on the National Appeals time requirements? For example, will a borrower continue to have 30 days to request an appeal after the mediation process is concluded? If FmHA chooses to refer borrowers to mediation before or after an official denial because DALR$ can not find a feasible plan, FmHA should provide the borrower with the same rights and privileges as he/she would have in the appeals process. Among the most important would be for FmHA to state the specific reason(s) for DALR$ failure to find a feasible plan (this would be a requirement in the Appeals process). FmHA should also provide the borrower with a complete copy of the DALR$ analysis, and all other file information that would be accessible in an appeal. FmHA should notify borrowers of their right to the National Appeals process in the event that Mediation does not resolve the problem. This notification should be clearly stated in any referral letter that encourages borrowers to seek Mediation.

BORROWERS SHOULD BE NOTIFIED OF THE NATIONAL APPEALS OPTION ANYTIME FmHA COMMUNICATES WITH BORROWERS ADVISING THEM THAT A FEASIBLE PLAN CAN NOT BE FOUND.

FmHA decision makers should be instructed not to use Mediation as way to circumvent the Appeals process. Since the National Appeals process has been established many FmHA denials have been overturned. The new Appeals process is one of the major borrowers rights placed in the

Agricultural Credit Act of 1987. It seems only fair that FmHA would notify borrowers of this right anytime it communicates an adverse decision to a borrower. Mediation can be a very effective tool in resolving credit problems, especially in cases that involve creditors other than FmHA. However, borrowers should understand that if outside creditor problems can not be resolved, and FmHA can not find a feasible plan in Mediation, the National Appeals process will review the case file and make a decision independent of the FmHA decision maker.

THE NATIONAL APPEALS PROCESS

Many borrowers have used the National Appeals Division to review adverse FmHA decisions. A large percentage of decisions handed down from the National Appeals Division has overturned FmHA adverse decisions made on local levels. The National Appeals Division offers borrowers an opportunity to seek independent review of adverse decisions made by FmHA decision makers. The system also gives borrowers a type of checks and balance system allowing them to address specific issues before an independent hearing officer. This process also cuts down on direct confrontations between borrowers and decision makers. Even in cases that result in unfavorable decisions, borrowers generally have a better understanding of how specific FmHA rules apply to them. The bottom line, therefore, is that the National Appeals Division is serving a dual function; to provide borrowers the opportunity to have their cases reviewed by an independent hearing officer, and understand how specific FmHA rules apply to their situation. The latter may ultimately prove to have the most beneficial affect for FmHA and its borrowers.

OUTSTANDING DEFICIENCIES FROM VOLUNTARY CONVEYANCES SHOULD BE DEBT SETTLED

Many borrowers were persuaded by FmHA to turn their farms and/or chattels back to FmHA, and in return for saving FmHA the expense of foreclosure, FmHA would write off any deficiencies. Consequently, many Oklahoma farmers gave FmHA their entire operations without contest believing that FmHA would wipe the slate clean, and give them the opportunity to start over. Several Oklahoma farmers are among those who received 45 day packets. It seems unfair that these farmers have conveyed all their assets to FmHA over two years ago, began rebuilding their operations, and are now being required to comply with another FmHA program. FmHA should debt-settle these cases under regulations existing at the time that the borrower agreed to convey his/her assets.

OVER 200 LETTERS RETURNED

Ag-Link and Legal Aid of Western Oklahoma sent out invitations to 3360 Oklahoma farmers who's names appeared on FmHA's list of borrowers who were sent restructuring notices. These invitations announced to farmers that Ag-Link and Legal Aid would be conducting a series of restructuring clinics designed to assist them in filling out each of the required FmHA forms, and learn about borrowers rights contained in the new regulations. Ag-Link obtained the list through a Freedom of Information request presented to FmHA by various farm groups. Farmers Union in Denver Colorado provided Ag-Link with a complete set of mailing labels that were placed on envelops and mailed to Oklahoma farmers. Over 200 of these invitations were returned to Ag-Link because of incorrect

address's. If this same number of certified notices were returned to FmHA, an immediate program should be initiated to verify that each borrower has had a change of address, and, in such cases, FmHA should notify local FmHA offices to make an effort to contact these borrowers.

FmHA FORMS----CONFUSION AND LACK OF EFFECTIVE COMMUNICATION

On December 9,1988 FmHA sent a notice to the Oklahoma State FmHA office advising them of the rule of reason, and announced that three forms would no longer be necessary for borrowers to submit. These three forms were as follows:

1. Form FmHA 410-8 Applicant Reference Letter
2. Form ASCS SCS-CPA-26 Highly Erodible Land and Wetland Conservation Certification.
3. Form AD-1026 Highly Erodible Land and Wetland Conservation Conservation Certification.

The rules contained in the 45-day notice packet, however, said differently. During the Ag-Link/Legal Aid clinics borrowers became confused that local FmHA offices were advising them not to submit certain forms, while the packet instructions required the forms to be submitted. A few days later FmHA announced that the three forms would be required after all. During this period of time some borrowers were advised that it was not necessary to respond to Attachment 3 (Non-Monetary Default), contained in some of the notice packets. Some borrowers who submitted Attachment 4, (borrowers response to Attachment 3), received it back from FmHA with an explanation that is was not necessary to send it in. Perhaps local officers were confused as to what forms were no longer

required. The results of the latter may be that these Oklahoma borrowers who did not respond to Attachment 3 may have lost their rights to appeal issues related to the Non-Monetary-Default, and may have their loans accelerated. FmHA should take immediate steps to instruct local offices that they should accept Attachment 4,(responses to the Non-Monetary-Default forms), and advise borrowers of their rights to appeal the specific reason(s) for FmHA's decision to claim Non-Monetary-Default against the borrower.

FIVE YEAR PRODUCTION HISTORY???

FmHA instructions require borrowers to base Farm and Home Plans on five years of production history.[6] These rules do not require borrowers to submit documentation of five years of production records within 45 days. Many Oklahoma farmers are being told by local offices that they must submit documented evidence of the past five years of production history, while others are being told that as long as the borrowers projections are consistent with production histories, no documentation will be required. If FmHA officials conclude that borrowers plans do not reflect an accurate projection based on past production history, borrowers should then be informed of FmHA's decision not to accept the plan, inform borrowers of the specific reason(s) why the projections are not acceptable, and inform them of their appeal rights. FmHA is required by its own regulations to conduct a year end analysis of each borrowers file every year. This analysis may be used by the county offices to determine if the borrowers projections are reasonable.

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6. 7 C.F.R. Section 1954.57 (d) (7).

AG-LINK STANDS READY TO HELP FmHA AND ITS BORROWERS

Ag-Link staff began working overtime shifts a few days before Thanksgiving, when borrowers began receiving the FmHA notices. They teamed up with Legal Aid of Western Oklahoma and conducted a series of clinics throughout the month of December. These clinics were conducted daily from 12:30 to 5:30. The mornings were reserved to research unanswered questions from the clinics, and work one-on-one with borrowers. Ag-Link and Legal Aid was successful in placing the DALR$ computer program in operation during the 45 day period, and have been able to assist hundreds of borrowers in developing restructuring plans. Staff of both organizations have continued to be pressed to their limits to meet borrower's demands. The overwhelming demand placed on staff is indicative that FmHA also needs the assistance of both these organizations. Many staff members of both organizations were willing to forfeit holiday vacations, and time off to work through this process to assist FmHA and Oklahoma farmers. Ag-Link and Legal Aid of Western Oklahoma intends to continue working with Oklahoma farmers in an effort to educate them on FmHA rules and new financial technology that will need to be incorporated into management practices. Submitted on behalf of the Ag-Link and Legal Aid Staff.

Sincerely yours,

Ron Johnson,
Research Analyst
Ag-Link Coalition

(Attachments follow:)

Position 3

FORM APPROVED
OMB NO. 0575-0061

Form FmHA 431-2
(Rev. 7-88)

U.S. Department of Agriculture
Farmers Home Administration

FARM AND HOME PLAN

PERIOD COVERED BY PLAN: From 19 TO 19

NAME OF APPLICANT/BORROWER

CASE NUMBER | DATE OF PLAN | ACRES OWNED TOTAL ( ) CROP ( )

A. BALANCE SHEET

CURRENT FARM ASSETS	$ VALUE
Cash: Savings: ($) Checking ($)	
Other Invest: (Time Cert $) (Other $)	
Accounts and Notes Receivable	
Crops and Feed — Units — Value Per Unit	
Livestock to be sold — Units — Unit Weight — Value Per Unit	
Growing crops — Acres — Cost/Acre	
Supplies & Prepaid Expenses	
Leases	
Other	
TOTAL CURRENT FARM ASSETS ▶	
INTERMEDIATE FARM ASSETS	
Accounts & Notes Receivable beyond 12 months	
Breeding Livestock — Units — Value Per Unit	
Machinery, Equipment, Vehicles	
Cash Value, Life Ins. (Face Amt. $)	
CCC Grain Reserve: (Qty.) (Value/Unit)	
Coop Stock	
Other	
TOTAL INTERMEDIATE FARM ASSETS ▶	
LONG TERM FARM ASSETS (Farm Real Estate)	
Total Acres — Date Purchased — Cost	
Coop Stock	
Equity in Partnerships/Corporations/Joint Operations/Cooperatives	
Other	
TOTAL LONG TERM FARM ASSETS ▶	
TOTAL FARM ASSETS ▶	

CURRENT FARM LIABILITIES	Past Due	$ AMOUNT
Accounts and Notes Payable (Creditor & Due Date)		
CCC Loan: (Security) (Due Date)		
Current Portion of Principal Due on:		
Intermediate Liabilities		
Long Term Liabilities		
Accrued Interest on:		
Accounts and Notes Payable		
Intermediate Liabilities		
Long Term Liabilities		
Accrued Taxes		
Income Tax & Social Security		
Other (judgments, liens, etc.)		
Accrued Rent/Lease Payments		
TOTAL CURRENT FARM LIABILITIES ▶		
INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)		
Creditor — Due Date — Int. Rate — Amount Delinquent		
CCC Grain Reserve		
Facilities Pmt. $		
Loan Secured by Life Insurance		
Other		
TOTAL INTERMEDIATE FARM LIABILITIES ▶		
LONG TERM FARM LIABILITIES (Portions due beyond 12 months)		
Creditor — Due Date — Int. Rate — Amount Delinquent		
Other		
TOTAL LONG TERM FARM LIABILITIES ▶		
TOTAL FARM LIABILITIES ▶		

Use Current Market Values Only

Using Inflated Values Will Raise Net Recovery Value

Do Not List in Both Categories

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

A. BALANCE SHEET (continued)

2

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES	$ AMOUNT
Real Estate		Nonfarm accounts payable	
Car, Recreational Vehicles, etc.			
Household goods			
Cash value of Life Insurance			
Stocks, bonds, and other			
Nonfarm Business		Nonfarm notes payable:	

Name of Creditor	Due Date	Interest Rate	Annual Instal.	Principal Balance

		TOTAL NONFARM LIABILITIES ▶	
		TOTAL LIABILITIES ▶	
TOTAL NONFARM ASSETS ▶		NET WORTH ▶	
TOTAL ASSETS ▶		**TOTAL LIABILITIES AND NET WORTH** ▶	

The above information is furnished for the purpose of securing and maintaining credits and is certified to be complete and correct. The undersigned authorizes the FmHA to make all inquiries deemed necessary to verify the accuracy of the information contained above to determine my credit-worthiness and to answer questions about their credit experience with me. I agree to notify FmHA promptly to any material changes to the above. I recognize that making any false statement on this Farm and Home Plan or any other loan document may constitute a violation of criminal law.

Signature of Applicant/Borrower/Entity Member	Date

1. Total of Cash On Hand, Crops and Livestock for Immediate Sale, and Income To Be Received in Immediate Future			
2. Debts and Expenses We Will Pay From Above Cash and Income (Itemize)			
3. Cash Carry-Over for Next Year's Operations After Paying These Debts			
	Beginning of Year	End of Year	Increase or Decrease If FmHA use only)
4. Net Worth (Total Property Owned Minus Total All Debts)			
5. Total Land Debt			
6. Total Debts Other Than Land			

B. RENTAL AND LEASE INFORMATION

Land-General Description	Landlord	Acres: Year	Acres: Crop	Type of Lease	Annual Cash Rent	Expiration Date
	TOTAL ▶					

Other Items-Description	Owner	No. of Units	Type of Lease	Annual Payment	Expiration Date

NOTE: All "actual" data to be completed by end of crop year.

C. IMPROVEMENTS AND KEY PRACTICES — FARM, HOME AND FINANCIAL MANAGEMENT

Crops; Soil; Livestock; Financial Management; Maintenance; Repairs; Food Production and Conservation; Health, Home, Environmental, Community and Rural Development Activities,; Etc.	When To Do It	Source Of Funds	Actual Accomplishments
Type of Analysis ( ) Month			

D. CROPS, PASTURE, ETC. — PRODUCTION AND SALES

PLANNED							ACTUAL							
CROPS, PASTURE, SET ASIDE PROGRAM PAYMENTS, ETC.	ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	ACRES	YIELD PER ACRE	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1.													
2.													
3.													
4													
5													
6.													
7.													
8.													
9.													
10.													
11. FARMSTEAD, GARDEN AND ROADS													
12. TOTAL (ENTER TABLE J, LINE 1)													

E. LIVESTOCK AND PRODUCTS — PRODUCTION SALES

PLANNED							ACTUAL						
LIVESTOCK AND PRODUCTS AND WOOL MOHAIR PROGRAM PAYMENTS	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FOR: FARM USE	SALE	@	DOLLAR SALES	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE UNITS FARM USE	HELD FOR SALE	SOLD	@	CASH INCOME
1.													
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10. MILK (LBS.)													
11. EGGS (DOZ.)													
12. TOTAL (ENTER TABLE J, LINE 2)													

Actuals will be compared to This Plan

-CAUTION-

Do Not Fill in Actuals

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG				
FOOD INCL. LUNCHES				
CLOTH., PERS. CARE				
HEALTH				
HOUSE REPAIR AND SANITATION				
SCHOOL				
CHURCH, RECREATION				
PERS. INSURANCE				
TRANSPORTATION				
FURNITURE & OTHER				
TOTAL ▶				

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR				
MACHINERY REPAIR				
FARM BUILDING & FENCE REPAIR				
INTEREST				
RENT				
FEED				
SEED				
FERTILIZER				
PESTICIDES & SPRAY MATERIALS				
OTHER SUPPLIES				
LIVESTOCK EXPENSE				
MACHINERY HIRE				
FUEL AND OIL				
PERSONAL PROP. TAX				
REAL ESTATE TAXES				
WATER CHARGES				
PROPERTY INSURANCE				
AUTO & TRUCK EXPENSE				
UTILITIES				
CURRENT OPNG. BILLS (TABLE A)				
TOTAL ▶				

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
DEBTS REFINANCED (TABLE A)				
TOTAL ▶				

I. CREDIT FOR:	OTHER	FmHA	PLANNED	ACTUAL
FAMILY LIVING				
FARM OPERATING				
CAPITAL EXPENDITURES				
TOTAL ▶				

J. SUMMARY OF YEAR'S BUSINESS	PLANNED	ACTUAL
1. CROP INCOME *(Table D)*		
2. LIVESTOCK INCOME *(Table E)*		
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME		
4. TOTAL CASH FARM INCOME *(1, 2 and 3)*		
5. CASH FARM OPERATING EXPENSES *(Table G)*		
6. NET CASH FARM INCOME *(4 Minus 5)*		
7. NON-FARM INCOME		
8. TOTAL NET CASH FARM & NON-FARM INCOME *(6 Plus 7)*		
9. CASH FAMILY LIVING EXPENSES *(Table F)*		
10. NET CASH INCOME *(8 Minus 9)*		
11. CASH CARRY-OVER *(Page 2, Line 3)*		
12. LOANS AND OTHER CREDIT *(Table I)*		
13. INTEREST *(Table G)*		
14. TOTAL AVAILABLE *(10, 11, 12 and 13)*		
15. CAPITAL EXPENDITURES *(Table H)*		
16. BALANCE AVAILABLE *(14 Minus 15)*		
17. GROSS CASH INCOME *(4 Plus 7)*		

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PLAN			ACTUAL AMOUNT PAID
		PRIN. AND INT. TO BE PAID	DATE	SOURCE OF FUNDS	
INCOME AND SOCIAL SECURITY TAXES					
TOTAL ▶					

You MAY Not qualify for Restructuring if Line 16, Section "J" is more than "Total" Amount Due Section "K"

I agree to follow this plan and to discuss with the County Supervisory any important changes that may become necessary. This instrument is a prospective plan only and does not release the security interest of the government in any security referred to in this plan.

"I RECOGNIZE THAT MAKING ANY FALSE STATEMENT ON THIS FARM AND HOME PLAN OR ANY OTHER LOAN DOCUMENT MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW."

Signature of Applicant/Borrower	Date
Signature of County Supervisor	Date

United States Department of Agriculture | Farmers Home Administration | Washington D.C. 20250

NOTE — THIS HAS BEEN RESCINDED. — SEE DEC. 15 LETTER WHICH REPLACED THIS —

December 9, 1988

SUBJECT: Assisting Farmer Programs Borrowers with Completing Applications for Primary and Preservation Servicing Options

TO: All State Directors, District Directors and County Supervisors

Considerable attention has focused on the fact that farmers must have a completed application filed with their County Office, within 45 days after they receive the Notice. The "RULE OF REASON on receiving applications must be followed. If the borrower has always been helped by the Farmers Home Administration (FmHA) in filling out applications, we should help again.

When the borrower has responded to the County Office with a good faith effort within 45 days to supply all the information required for an application, accept the application even though incomplete and offer assistance deemed necessary. Farmers who have responded with a good faith effort even though the application is not complete, will be considered to be in compliance with the 45 day time requirement. When the borrower submits an incomplete application for the loan servicing programs, the County Supervisor will send the borrower a letter within 5-days of receiving the incomplete application, identifying and requesting the information needed to complete the application and process the request.

It has been determined that Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," Form SCS CPA-26, "Highly Erodible Land and Wetland Conservation Determination," and Form FmHA 410-8, "Application Reference Letter," will not be needed as part of the application for Primary and Preservation servicing requests. County Supervisor will immediately advise all borrowers who received the notice, of this decision.

FmHA Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

State Directors will take immediate action to make sure that all County Offices comply with this directive. It is important that County Supervisors keep the "RULE OF THE REASON" in mind and be compassionate and cooperative at all times.

/s/
LA VERNE AUSMAN
Acting Administrator

Sent by electronic mail on at by ASD.
State Directors will immediately distribute to other personnel.

December 15, 1988

TO: All State Directors, District Directors and County Supervisors

FROM: La Verne Ausman, Acting Administrator Farmers Home Administration

SUBJECT: Assisting Farmer Programs Borrowers with Completing Applications for Primary and Preservation Servicing Options

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88-715 ENR

CRS Report for Congress

A REVIEW OF FARMERS HOME ADMINISTRATION'S NEW POLICY FOR DELINQUENT FARM BORROWERS

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Food and Agriculture Section
Environment and Natural Resources Policy Division

CRS

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November 29, 1988

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SUMMARY

The Agricultural Credit Act of 1987 (P.L. 100-233) requires FmHA to write down a delinquent loan, when the cost associated with a write-down is less than the cost of foreclosure. FmHA has formalized this policy in regulations released on September 14, 1988, which detail a complex loan servicing regimen that FmHA must follow before foreclosure proceedings can be instituted. FmHA has notified 81,000 of its delinquent borrowers of their borrower rights and requires them to request available loan servicing options within 45 days or face foreclosure.

FmHA offers its delinquent borrowers the opportunity to consolidate, reschedule/reamortize, defer or write down their loans to the point that the borrower displays the ability to repay the restructured loan and the cost to the government is minimized. If these options fail, the borrower can use State loan mediation programs when available and applicable, appeal FmHA decisions, or buy out the delinquent loan at the recovery value. If the borrower lacks the financial resources, he can voluntarily convey the collateral property to FmHA and in return be offered a leaseback/buyback provision and homestead protection. When all of these options fail to keep the farmer on the farm, FmHA's final alternative is to begin legal proceedings and foreclose.

FmHA estimates that only 16,000 of the 81,000 delinquent borrowers are expected to qualify for a loan write-down and the rest could be faced with losing their property to FmHA. Many of these accounts have been relegated to "inactive" status, meaning that these borrowers may have already discontinued farming operations, or have no collateral available, or be in the process of bankruptcy. Nonetheless, the latest FmHA action represents a serious attempt by the government to collect on a loan portfolio that is severely delinquent.

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A Review of Farmers Home Administration's New Policy for Delinquent Farm Borrowers

Background

Beginning November 1988, an estimated 81,000 borrowers of the U.S. Department of Agriculture's Farmers Home Administration (FmHA) that are at least 180 days behind in their loan payments received letters from the agency informing them of their delinquency. Recipients of this letter are given 45 days to respond, or FmHA will initiate legal actions to collect the outstanding debt. For those who do respond to the letter, FmHA provides the borrower with an array of loan servicing options, with the purpose of keeping the farmer on the farm, and at the same time minimizing the losses to the Federal government.

FmHA is the Federal government "lender of last resort" with approximately $25 billion in farm loans to 246,000 family farmers that have been denied credit from commercial sources. Payment on nearly 50 percent of this total is delinquent. Farmers had borrowed this money in past years to finance their operations or to buy or expand farms.

Since May 1987, a foreclosure moratorium ordered by a U.S. District Court has prevented FmHA from instituting any type of "adverse action " against any delinquent borrowers. The court order requires FmHA to explicitly outline the available loan servicing options and appeal rights of delinquent borrowers, before foreclosure proceedings can continue.

Separately, the Agricultural Credit Act of 1987 requires FmHA to restructure a delinquent loan as long as restructuring is more cost-efficient to the government than foreclosure. The Act instructed FmHA to write new rules for this process. FmHA relased interim regulations on September 14, 1988 detailing the steps FmHA will follow before foreclosure proceedings are reinstituted, in response to the court order and the legislative mandate.

Overview

FmHA borrowers who can prove they are unable to make payment on a scheduled loan because of circumstances beyond their control can become eligible for two basic types of servicing: primary loan service programs and preservation loan service programs.

The purpose of the primary programs is to restructure or write down the loan to the point that the delinquent borrower demonstrates the ability to

repay the loan. The principal restructuring options available include loan consolidation, rescheduling/reamortization, interest rate reduction, and loan deferral. If these restructuring options do not improve the borrower's repayment ability, FmHA can write down a loan to recovery value.

The preservation programs are triggered when it is proven that the primary programs will not provide the borrower with a viable plan for financial recovery and loan mediation and borrower appeals are unsuccessful. At this stage, the farmer would be given the opportunity to lease and/or buy back his property and qualify for homestead protection if the farmer conveys the security property to FmHA.

Recipients of the delinquency letter are informed of all of the details of the primary and preservation programs in an attachment to the notice. Within the 45-day deadline, the delinquent borrower must return a form acknowledgement letter requesting these programs, and must complete as many as nine applications and forms. FmHA must respond to the borrower's request within 60 days.

Who Will Qualify for Loan Restructuring?

If a borrower is behind in scheduled payments on a farmer program loan because of a natural disaster, family illness, loss of off-farm income, animal disease, low commodity prices, high expenses in a local area, or any reason beyond the control of the borrower, he will be considered for loan restructuring. The FmHA county supervisor decides whether the borrower is qualified and must inform applicants of the decision within 60 days of receipt of an application.

In all cases, the deciding factor will be whether restructuring can be completed at a smaller cost to the government than foreclosure. In other words, if the expected stream of payments from a restructured loan is greater than the recovery value from foreclosure, the applicant will be considered for restructuring and a potential loan write-down. At the same time, the borrower must demostrate the ability to successfully manage the payments on the restructured loan.

An impact analysis conducted by FmHA projects that of the 81,000 borrowers that will receive a delinquency letter, only 16,000 (20 percent) are expected to qualify for a loan write-down. The remaining 65,000 could then be subject to foreclosure, unless they voluntarily convey the collateral property to FmHA. FmHA estimates that at least 5,000 of these are "collection only" accounts, which means that no collateral is backing these loans, requiring FmHA to absorb the loss.

How Does FmHA's New Policy Work?

Step 1: Primary Loan Service Program

The first question asked is "can the borrower demonstrate eventual repayment ability by consolidating, rescheduling or reamortizing their loans, either with or without an interest rate reduction?" The following is a review of these options, which are available to borrowers under the primary loan service program.

A) Loan Consolidation: Two or more of the same type of loans can be combined into one larger loan. Even if the loans carry different interest rates, they can be consolidated at the lower interest rate. However, only similar-purpose loans can be consolidated. For example, if a borrower has two operating loans outstanding, they can be consolidated, but a farm ownership loan cannot be consolidated with a farm operating loan.

B) Loan Rescheduling/Reamortization: The payback period on a delinquent loan can be extended in order to improve a farmer's cashflow. As an example, an outstanding operating loan could have its term extended to as many as 15 years, and a loan secured by real estate can have its maturity extended to a maximum of 40 years from the date the original loan was signed. (The term "rescheduled" is used for a nonreal estate loan and "reamortized" for a real estate loan.)

C) Interest Rate Reduction: When a loan is consolidated, rescheduled or reamortized, the interest rate on the new loan can be reduced to either the rate on the original loan or the rate for a new similar type regular loan, whichever is less. The borrower may be eligible for a "limited resource" rate, which is significantly lower than regular rates.

If an analysis of the borrower's financial position finds that combinations of options A) through C) will not help the farmer repay his debt, the next primary loan servicing option to be considered is a loan deferral.

D) Loan Deferral: A loan deferral allows a delinquent borrower to postpone the payment of principal and interest for up to five years. To qualify, a borrower must be unable to pay essential living expenses or maintain the farm property and pay the debts, but must demonstrate the potential to begin debt payments when the deferral period ends. The borrower is not required to pay interest on the deferred interest. Instead, the deferred interest will be repaid in equal installments over the remaining term of the loan. The interest rate at the end of the deferral will be the lesser of the current rate on a similar type new loan or the original rate on the loan.

Highly erodible land may qualify for the Softwood Timber Program, whereby a qualified borrower can defer for up to 45 years a maximum of $1000 of debt per acre if the land is planted to softwood timber.

If loan servicing options A) through D) do not provide a feasible restructuring plan, the borrower may become eligible for a debt write-down.

E) Debt Write-Down: At this stage of the loan restructuring process, FmHA determines whether it is more cost-efficient to the Government to write down the loan to recovery value or to foreclose (liquidate) the loan. If debt write-down is feasible, the principal and interest on the debt can be reduced to the current market value less the cost of liquidation.

As an example, if a borrower has a $300,000 farm ownership loan and the value of the collateral property is currently $100,000 and the cost of foreclosing and selling the property is $25,000, the borrower could have the principal balance reduced to as little as $75,000, the recovery value. FmHA will only write down as much debt as required to give the borrower a feasible plan for recovery.

As a further qualification, the borrower must be able to pay all living and farm operating expenses and scheduled debt payments, including the new written-down loan. A loan write-down can be used in conjunction with loan servicing options A) through D), meaning that a loan that is consolidated, reamortized/rescheduled or deferred can also be written down to the extent necessary.

Wetlands, highly erodible land or marshlands can be signed over to the Secretary of Agriculture under the Conservation Easement program and USDA may reduce the debt on that portion of the land to as low as the market value of the land.

Step 2: Loan Mediation Programs

If FmHA determines that a viable financial plan cannot be devised using the primary loan service programs, the borrower can next use a State mediation program, if one is available. Many farm States operate a mediation program, whereby trained mediators help devise a mutually agreeable plan between a borrower and his unsecured lenders, attempting to work out the delinquent borrower's farm debt problems. FmHA will participate in any State loan mediation program that is approved by USDA. In States where there is no certified program, the FmHA State director will conduct a voluntary meeting of all creditors, with either a mediator or a designated FmHA representative.

Step 3: Notice of Intent to Accelerate the Loan

When all efforts to develop an agreement have been exhausted, the borrower will receive a notice within 15 days stating FmHA's intention to "accelerate" the delinquent loan. When a loan is accelerated, it becomes due immediately, and is in effect, the last step before foreclosure proceedings begin. Borrowers that receive this notice can use any or all of the following options:

- request a meeting with FmHA to discuss the acceleration,
- request an appeal hearing,
- request an independent appraisal at the borrower's expense if the borrower believes that FmHA's appraisal was inaccurate, or
- buy out the delinquent loan at the recovery value in cash within 45 days of receipt of the acceleration letter or within 45 days after the appeal process ends.

Step 4: Preservation Loan Service Program

When a borrower does not have adequate funds to buy out the loan at recovery value and none of the above options provide a feasible plan for recovery, the borrower will be considered for preservation loan service programs. Under the preservation program, if the borrower voluntarily conveys the collateral property to FmHA in discharge of the debt, FmHA in turn will give the borrower the opportunity to lease or purchase the property back from FmHA through its leaseback/buyback program. If the borrower's residence and other important buidings are conveyed to FmHA along with the farm, the borrower may also be eligible for homestead protection, whereby the borrower can lease and/or purchase his residence and up to 10 acres of adjoining land. At the same time that the borrower signs over the property to FmHA, an agreement will be reached on the amount of rent, the number of years of the lease and the details on the option to buy.

Step 5: Loan Acceleration and Foreclosure

Any borrower who does not qualify for the preservation loan program has the right to a meeting with FmHA within 15 days to convince them of his qualifications for the program. If the borrower's meeting is unsuccessful, an appeal can be scheduled within 30 days after the meeting. A lost appeal results in the acceleration of the loan and legal foreclosure proceedings begin. At this stage, the borrower still has the right to either sell the property and pay FmHA the equivalent of the net recovery value, or voluntarily convey the property to FmHA. Once foreclosure proceedings are completed and FmHA acquires the property, FmHA must once again offer the borrower and his family the leaseback/buyback and homestead protection options. Again, the borrower will have the opportunity to appeal all adverse decisions.

Conclusion

Much attention has been given to the potential for a new wave of farm foreclosures as a result of the new FmHA action. Although as many as 65,000 of the 81,000 delinquent borrowers receiving this notice are expected to be unqualified for a loan write-down and could be subject to foreclosure, the number of active farm operations that could be lost is difficult to determine. The appendix lists the number of borrowers by State who will likely receive the notice based on delinquency reports as of November 1, 1988 and breaks down the recipients by "active" and "inactive" borrowers. Slightly more than 33,000 of the 81,000 borrowers who will receive the letter are considered inactive, some of whom have already discontinued farm operations. However, some of these "inactive" borrowers are active farmers, who have no security backing their delinquent loans. When the borrowers respond to the delinquency notices, better information should become available on their status.

Nonetheless, this latest FmHA action represents a serious attempt by the government to collect on a loan portfolio that is severely delinquent. Further court challenges are likely to ensue, since it remains to be seen whether the new FmHA regulations fulfill the 1987 court order requiring more explicit borrower rights, before FmHA foreclosures are reinstituted.

APPENDIX: Number of Potential Recipients of FmHA Delinquency Letters

	Active Borrowers	Inactive Borrowers	Total
Alabama	692	409	1,101
Alaska	3	1	4
Arizona	213	225	438
Arkansas	1,946	835	2,781
California	1,087	583	1,670
Colorado	601	375	976
Connecticut	35	15	50
Delaware	23	27	50
Florida	660	916	1,576
Georgia	1,864	2,238	4,102
Hawaii	99	9	108
Idaho	1,137	593	1,730
Illinois	1,358	635	1,993
Indiana	1,063	1,334	2,397
Iowa	1,456	1,511	2,967
Kansas	979	849	1,828
Kentucky	1,219	625	1,844
Louisiana	1,940	2,419	4,359
Maine	422	130	552
Maryland	178	163	341
Massachusetts	25	34	59
Michigan	1,279	428	1,707
Minnesota	2,901	940	3,841
Mississippi	2,560	2,210	4,770
Missouri	1,938	1,225	3,163
Montana	948	241	1,189
Nebraska	1,052	1,120	2,172
Nevada	81	32	113
New Hampshire	7	1	8
New Jersey	106	147	253
New Mexico	236	155	391
New York	1,128	593	1,721
North Carolina	1,163	1,234	2,397
North Dakota	2,019	808	2,827
Ohio	591	802	1,393
Oklahoma	2,398	971	3,369
Oregon	411	311	722
Pennsylvania	278	251	529
Rhode Island	7	3	10
South Carolina	584	615	1,199
South Dakota	1,781	1,224	3,005
Tennessee	1,926	778	2,704
Texas	3,458	2,881	6,339
Utah	175	66	241
Vermont	29	19	48
Virginia	694	558	1,252
Washington	634	147	781
West Virginia	241	60	301
Wisconsin	1,447	951	2,398
Wyoming	143	132	275
Puerto Rico	667	190	857
Others	20	1	21
Total	47,902	33,020	80,922

Active Borrower = Any FmHA borrower who is actively farming, has security property backing the loan, and is not in bankruptcy.

Inactive Borrower = Any FmHA borrower who is not actively farming, and/or has no security property, and/or is involved in bankruptcy proceedings.

Source: FmHA Farmer Program Delinquency Report, November 1, 1988
Report Code 541